JOHN T. FEY, C

Supreme Court of the United States

OCTOBER TERM, 1956

No. [redacted]

MISSISSIPPI VALLEY BARGE LINE COMPANY,

Petitioner,

versus

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE,

Respondent.

Petition for Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

UNITED STATES OF AMERICA

UNITED STATES COURT OF APPEALS

FIFTH JUDICIAL CIRCUIT.

PLEAS AND PROCEEDINGS had and done at a regular term of the United States Court of Appeals for the Fifth Circuit, begun on the first Monday in October, A. D., 1956, before the Honorable Joseph C. Hutcheson, Jr., Chief Judge, the Honorable Edwin R. Holmes and the Honorable Wayne G. Borah, Circuit Judges:

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellant & Appellee,

versus

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE,
Appellee & Appellant.

(AND REVERSE TITLE)

BE IT REMEMBERED, That heretofore, to-wit, on the 10th day of July, A. D., 1956, a transcript of the record in the above styled cause, pursuant to appeals from the United States District Court for the Eastern District of Louisiana, was filed in the office of the Clerk of the said United States Court of Appeals for the Fifth Circuit; and that on the 20th day of November, A. D., 1956, a supplemental transcript of the record was filed which said transcript and supplemental transcript were filed and docketed in said Court of Appeals as No. 16202, as follows, to-wit:-

TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

NO. 16202

MISSISSIPPI VALLEY BARGE LINE COMPANY
Appellant

versus

ESSO SHIPPING COMPANY, Claimant of the S.S. QUEMADO LAKE
Appellee

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE
Appellant

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY
Appellee

Appeals from the United States District Court for the Eastern District of Louisiana

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(ORIGINAL RECORD RECEIVED) Jul 10 1956

U.S. Court of Appeals

FILED

JUL 10 1956

John A. Feehan, Jr.
Clerk

I N D E X

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UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF LOUISIANA
NEW ORLEANS DIVISION

* *

MISSISSIPPI VALLEY BARGE LINE CO.

versus

ESSO SHIPPING COMPANY, Claimant of the SS QUEMADO LAKE

NO. 2229

ADMIRALTY

* *

A P P E A R A N C E S :

Messrs. Lemle & Kelleher
(Selim B. Lemle, Esq.)

Proctors for Libellant - Appellant-Appellee

Messrs. Terriberry, Young, Rault & Carroll
(Alfred M. Farrell, Jr., Esq.)

Proctors for Respondent - Appellee-Appellant

...ooOoo...

APPEALS from the District Court of the United States for the Eastern District of Louisiana, to the United States Court of Appeals for the Fifth Circuit, returnable within forty (40) days from the 13th day of April, 1956 at the City of New Orleans, Louisiana.

...ooOoo...

Extension of time granted by the Honorable United States District Court for the Eastern District of Louisiana bringing the return date up to and including the 12th day of July, 1956.

...ooOoo...

L I B E L

(Number and title omitted) (Filed: December 1, 1952)

The libel of Mississippi Valley Barge Line Company, as owner of the diesel towboat NEW ORLEANS

against

SS QUEMADO LAKE, her engines, tackle, apparel, and furniture, etc. and all persons intervening for their interest therein, in a cause of collision, civil and maritime, with respect represents:

1.

At all times hereinafter mentioned, libellant was and still is a corporation existing under and by virtue of the laws of the State of Delaware and was and still is the owner of the diesel towboat NEW ORLEANS.

2.

The Towboat NEW ORLEANS is a large steel river type towboat of 2200 horsepower, 1090 gross tons register, documented under the laws of the United States and bears official No. 230804. Her register dimensions are 215 feet in length, 40.6 feet in width and 10.1 feet in depth.

3.

SS QUEMADO LAKE, on information and belief, was at all times hereinafter recited and now is, owned by Independent Tankships, Inc., and operated by Esso Shipping Company. She is an American type T-2 tanker, and a documented vessel of the United States, official No. 244,063, of 10,172 gross tons register. She is 504 feet in length, 68.2 feet in width, and 39.2 feet in depth. The SS QUEMADO LAKE now is or during the

currency of process herein will be within the Eastern District of Louisiana and within the territorial jurisdiction of this Honorable Court.

4.

On information and belief:

On June 20, 1952, the towboat NEW ORLEANS was on a voyage up the Mississippi River, having departed New Orleans that day. At 9:15 p.m. or thereabouts, the towboat NEW ORLEANS with a long tow of seventeen (17) barges made up ahead of the towboat was proceeding up the Mississippi River at a point in the vicinity of Riverton Light. The pilot of the towboat NEW ORLEANS sighted the red light and range lights of a large vessel bound downstream rounding Bringier Point. This vessel subsequently was found to be the SS QUEMADO LAKE.

5.

On information and belief:

The SS QUEMADO LAKE departed from Baton Rouge at about 4:35 p.m. on June 20, 1952, and at about 4:40 p.m. was squared away, headed downstream in the Mississippi River. The steamship proceeded downstream full ahead at a speed in excess of fifteen (15) miles per hour over the bottom. When the SS QUEMADO LAKE was approaching Bringier Light, she laid a course for that light, which is on the east bank of the Mississippi River, then laid a course for Rateau Light, on the west bank of the river, and when reaching that light, laid a course for Riverton Light, on the east bank of the river, and while running on its course to Riverton Light, the SS QUEMADO LAKE collided with the towboat NEW ORLEANS.

On information and belief:

The pilot of the towboat NEW ORLEANS, when he saw the SS QUEMADO LAKE in the vicinity of Bringier Point Light, and saw that vessel's red light was that of a vessel on a course towards Rateau Light on the opposite, or west, bank of the river, blew one blast for a port-to-port passing. This passing signal was immediately answered by the SS QUEMADO LAKE, which replied with one blast, assenting to the port-to-port passing. The towboat NEW ORLEANS, with its tow, proceeding on its course up the river and the tow of the towboat NEW ORLEANS effected a port-to-port passing with the SS QUEMADO LAKE, but after passing the tow of the towboat NEW ORLEANS, the SS QUEMADO LAKE turned to its left and struck and collided with the towboat NEW ORLEANS on the after port quarter, near its stern, causing considerable damage and breaking the NEW ORLEANS loose from its tow. The weather was clear, the night starlit, with good visibility. Just prior to the collision, the towboat NEW ORLEANS was proceeding at approximately four (4) miles per hour over the bottom on the stretch of river between Riverton Light and Rateau Light, where there was approximately one thousand, two hundred (1,200) feet of navigable channel.

7.

On information and belief:

Nothing which the towboat NEW ORLEANS or its tow, or those in charge of their navigation, did or omitted to do in any way caused or contributed to the collision, but it was caused solely by the fault and negligence of the SS QUEMADO

LAKE and those charged with her navigation in the following particulars, among others, which will be shown on the trial of this cause, to-wit:

a) The QUEMADO LAKE was unseaworthy;

b) The QUEMADO LAKE was in charge of and was being navigated by persons who were inattentative to and did not properly fulfill their duties;

c) The QUEMADO LAKE was proceeding downstream at a grossly excessive speed of fifteen (15) miles per hour or more;

d) The QUEMADO LAKE failed to hold her course so as to effect a port-to-port passing of the NEW ORLEANS and her tow;

e) The QUEMADO LAKE crossed over towards the left descending bank of the River and, in changing her course, collided with the NEW ORLEANS:

f) The QUEMADO LAKE, being in a position to effect a port-to-port passing and having agreed thereto by the exchange of signals between her and the NEW ORLEANS, failed to effect such passage;

g) The QUEMADO LAKE failed to take any precautions to avoid a collision when the collision was imminent, and collided with the NEW ORLEANS while still proceeding at full ahead;

h) The QUEMADO LAKE had no lookout, or if she had a lookout, he failed to perform his duties and inform the bridge of the length and position of the NEW ORLEANS and her tow.

Libellant reserves the right to amend this article of its libel so as to set forth with greater particularity the specifications of fault hereinabove described and to add additional specifications if and when they become known.

8.

On information and belief:

In this collision, four (4) members of the crew of the towboat NEW ORLEANS alleged that they sustained personal injuries; the extent and seriousness of such injuries are not presently known, except as to one member of the crew, Leonard Kershaw, who was thrown from an upper bunk on the towboat NEW ORLEANS and sustained a back injury. Settlement was effected with this crewman in the sum of one hundred sixty-three dollars and twenty cents ($163.20) on the basis of voluntary compensation under the Compensation Act of the State of Illinois, the said seaman having accepted six (6) weeks' compensation at twenty-seven dollars and twenty cents ($27.20) per week - a total of one hundred sixty-three dollars and twenty cents ($163.20) in lieu of maintenance and cure, and any other remedy which he might have.

Libellant reserves the right to claim any additional amounts which it might be required to pay to the other injured seamen if and when any such payments will be required.

9.

On information and belief:

Libellant was damaged in the further sum of seventeen thousand, nine hundred eighty-three dollars and eight cents ($17,983.08), the cost of hull repairs, survey fees, incidental expenses and detention because of repairs made necessary to the towboat NEW ORLEANS by the collision.

Libellant's presently known damages as a result of the collision amount to eighteen thousand, one hundred forty-six dollars and twenty-eight cents ($18,146.28).

Libellant reserves the right to claim any other damages which it may sustain when they will become known to libellant.

10.

All and singular, the premises of this libel are true and correct, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, libellant prays that process in due form of law, according to the course of Courts of Admiralty and Maritime Jurisdiction of the United States and of this Honorable Court, do issue against the SS QUEMADO LAKE; that libellant be awarded a decree for the amount of its damages, to-wit, the sum of eighteen thousand, one hundred forty-six dollars and twenty-eight cents ($18,146.28), and the SS QUEMADO LAKE be seized and sold to pay this claim of libellant's in preference to and priority over all other claimants; together with interest and libellant's costs.

And for such further relief and orders as will be proper and equitable and the Court competent to grant.

LEMLE & KELLEHER

By: (sgd) Selim B. Lemle
Proctors for the Mississippi
Barge Line Company

STATE OF LOUISIANA:

PARISH OF ORLEANS :

BEFORE ME, the undersigned authority, personally came and appeared:

SELIM B. LEMLE,

who, being by me duly sworn, did depose and say:

That he is a member of the law firm of LEMLE & KELLEHER, proctors for Mississippi Valley Barge Line Company, the libellant named in the above and foregoing libel; that no corporate officer of Mississippi Valley Barge Line Company, which is a foreign corporation, is present in the Eastern District of Louisiana, which is the reason why he makes this affidavit, and he is authorized so to do, and to file this libel for and on behalf of Mississippi Valley Barge Line Company; he has read the above and foregoing libel, and all of the allegations of fact thereof are true and correct to the best of his knowledge, information and belief; the source of his information, which is the ground of his belief, is statements secured in an investigation of the collision which is the basis of the libel, and statements made to the United States Coast Guard in its investigation of the collision.

(sgd) Selim B. Lemle
SELIM B. LEMLE

Sworn to and subscribed before
me this 1st day of December, 1952.

(sgd) Edward S. Bagley
Notary Public
(seal)

...oOo...

ANSWER OF ESSO SHIPPING COMPANY

(Number and title omitted) (Filed: April 15, 1953)

The answer of Esso Shipping Company, as claimant of the SS QUEMADO LAKE, to the libel of Mississippi Valley Barge Line Company, as owner of the towboat NEW ORLEANS, with respect shows:

I.

The allegations of Article I of the libel are denied for lack of sufficient information to justify a belief.

II.

The allegations of Article II of the libel are denied for lack of sufficient information to justify a belief.

III.

The allegations of Article III of the libel are admitted.

IV.

The allegations of Article IV of the libel are denied for lack of sufficient information to justify a belief.

V.

The allegations of Article V of the libel are denied, except as may be hereinafter admitted.

VI

The allegations of Article VI of the libel are denied, except as may be hereinafter admitted.

VII.

The allegations of Article VII of the libel are denied.

VIII.

The allegations of Article VIII of the libel are denied for lack of sufficient information to justify a belief.

IX.

The allegations of Article IX of the libel are denied for lack of sufficient information to justify a belief.

X.

It is denied that all and singular the premises of the libel are true and correct. The admiralty and maritime

jurisdiction of the United States and of this Honorable Court is admitted.

XI.

And now further answering, claimant, on information and belief, shows the facts to be as follows:

On June 20, 1952, the tanker QUEMADO LAKE, fully loaded with a cargo of petroleum products, departed Baton Rouge bound down the Mississippi River for New Orleans, conned by a licensed river pilot, properly and efficiently manned, with a lookout on the forecastle head and a watch officer on the bridge. Her regulation navigation lights were burning brightly. Shortly after 8 P.M. and when in that section of the River between Darrow Light (175.3 A.H.P.) and Brangier Light (173.7 A.H.P.) on the left descending bank, the QUEMADO LAKE followed the channel and directed her course towards the pronounced bend in the River below Rateau Light (173 A.H.P.) on the right descending bank. It is the unvarying custom, which has the force of law, for the downbound vessel such as the QUEMADO LAKE to favor the bend and the upbound traffic to favor the point or opposite side of the River. In accordance with this procedure, the QUEMADO LAKE lay her course for the bend. While approaching the bend, those on the QUEMADO LAKE saw ahead a green light on the head of a tow of barges. This proved to be the tow being pushed by the NEW ORLEANS. The tow was bound upstream and had rounded the bend improperly favoring the bend side, or the right descending bank, in water reserved for downbound vessels such as the QUEMADO LAKE. When the towing lights of the towboat itself were seen indicating a tow ahead,

the QUEMADO LAKE sounded a signal of one blast, indicating that the downbound tanker would favor the bend along the right descending bank, as required, and proposing a port to port passage. The upbound NEW ORLEANS replied with one blast agreeing on the maneuver and passage. Immediately thereafter, the red side light on the head of the tow became visible as the NEW ORLEANS swung her tow to her starboard in an attempt to remove the tow from the bend and permit the QUEMADO LAKE to take her proper water as agreed. Accordingly, the QUEMADO LAKE steadied her heading and proceeded to run the bend close to the right descending bank. However, the NEW ORLEANS, having swung her tow to starboard, fell down into the bend as the QUEMADO LAKE was in the act of passing the tow port to port as agreed. The QUEMADO LAKE gave right rudder in an attempt to stay away from the towboat and stopped its engine. In doing so the loaded tanker was driven by the swinging towboat into the shallow water off the bank and when threatened with consequent loss of steerage way, she put her engine on full ahead and steadied her heading parallel to the bank. When almost clear of the towboat on a port to port passing, the QUEMADO LAKE was struck on its port bow by the port stern of the NEW ORLEANS, which vessel then raked the entire port side of the QUEMADO LAKE doing substantial damage, starting rivets and causing leaks and a loss of cargo from the port wing tanks.

XII.

Nothing that the QUEMADO LAKE or those in charge of her did or omitted to do in any way caused or contributed to the

collision, but it was caused solely by the fault and negligence of the NEW ORLEANS and tow and those in charge of her, the agents, servants and employees of the libellant in the following particulars, among others, which will be shown at the trial of this cause:

1. The NEW ORLEANS was unseaworthy;
2. The NEW ORLEANS was in charge of inefficient and incompetent personnel;
3. The NEW ORLEANS had no lookout;
4. The NEW ORLEANS was underpowered;
5. The NEW ORLEANS was incapable of handling and safely maneuvering her tow;
6. The NEW ORLEANS' tow was improperly made up, unweildy and of excess size and tonnage for safe navigation;
7. The NEW ORLEANS and tow were improperly lighted;
8. As the ascending vessel, the NEW ORLEANS, was navigating in an unlawful place in the River in the bend of the right descending bank in violation of the long-standing custom which has the force of law;
9. After agreeing to pass port to port the NEW ORLEANS swung her stern to her port while making the passage, and into collision;
10. After agreeing to pass port to port, the NEW ORLEANS failed to carry out her agreement.
11. After agreeing to give way to her starboard, the NEW ORLEANS swung her stern to her port and into

the QUEMADO LAKE;

12. The NEW ORLEANS failed to stop or reverse her engines.

13. The NEW ORLEANS took no steps to avoid collision;

14. The NEW ORLEANS navigated in disregard of the well-known conditions of current;

15. The NEW ORLEANS should have held back as she was stemming the current and permitted the down-bound QUEMADO LAKE to run the bend unencumbered.

Claimant reserves the right to amend this article so as to set forth with greater particularity the specifications of fault hereinabove described.

WHEREFORE, the premises considered, claimant prays that after due proceedings had, there be a decree in favor of claimant and against libellant, dismissing the libel, and for all costs and general and equitable relief.

Esso Shipping Company

By: Terriberry,Young,Rault & Carroll

By: (sgd) Alfred M. Farrell, Jr.
Proctors for Claimant.
825 Whitney Bank Building
New Orleans, Louisiana.

STATE OF LOUISIANA:

PARISH OF ORLEANS:

BEFORE ME, the undersigned authority, personally came and appeared:

ALFRED M. FARRELL, JR.,

who, being by me first duly sworn, did depose and say:

That he is a member of the firm of Terriberry, Young,

Rault & Carroll, Attorneys for claimant, Esso Shipping Company, in the foregoing answer; that he has read the foregoing answer and believes it to be true; that affiant makes this affidavit for the reason that claimant has no corporate officer within this jurisdiction.

(sgd) Alfred M. Farrell, Jr.

Sworn to and subscribed
before me, Notary Public,
this 14 day of April,
1953, at New Orleans, Louisiana.
(sgd) Walter Carroll, Jr.
Notary Public
(seal)

...oOo...

CROSS LIBEL OF ESSO SHIPPING CO.

(Number and title omitted) (Filed: April 15, 1953)

The Cross-libel of Esso Shipping Company, as claimant of the SS QUEMADO LAKE and as bailee of the cargo laden thereon, against Mississippi Valley Barge Line Company and against the towboat NEW ORLEANS, her engines, tackle, apparel, etc. with respect shows:

I.

At all times hereinafter mentioned, cross-libellant was and is now a corporation organized under and existing by virtue of the laws of the State of Delaware, with its principal place of business in New York, New York.

II.

At all times hereinafter mentioned, cross-libellant was the bareboat charterer, operator and owner pro haec vice of the American tank steamship QUEMADO LAKE and bailee of the cargo laden thereon. The said vessel's official number is

244063, 10172 gross tons, 504 feet in length, 68.2 feet in beam, and 39.2 feet in depth.

III.

At all times hereinafter mentioned, cross-respondent, Mississippi Valley Barge Line Company, was and is now a corporation organized under and existing by virtue of the laws of the State of Delaware, with a principal office in New Orleans, Louisiana, and was and is now the owner and operator of the towboat NEW ORLEANS.

IV.

The towboat NEW ORLEANS is now or will be during the pendency of process hereunder within this District and within the jurisdiction of this Honorable Court.

V.

On information and belief, cross-libellant shows:

On June 20, 1952, the tanker QUEMADO LAKE, fully loaded with a cargo of petroleum products, departed Baton Rouge bound down the Mississippi River for New Orleans, conned by a licensed river pilot, properly and efficiently manned, with a lookout on the forecastle head and a watch officer on the bridge. Her regulation navigation lights were burning brightly. Shortly after 8 p.m. and when in that section of the River between Darrow Light (175.3 A.H.P.) and Brangier Light (173.7 A.H.P.) on the left descending bank, the QUEMADO LAKE followed the channel and directed her course towards the pronounced bend in the River below Rateau Light (173 A.H.P.) on the right descending bank. It is the unvarying custom, which has the force of law, for the downbound vessel such as the QUEMADO LAKE to favor the

bend and the upbound traffic to favor the point or opposite side of the River. In accordance with this procedure, the QUEMADO LAKE lay her course for the bend. While approaching the bend, those on the QUEMADO LAKE saw ahead a green light on the head of a tow of barges. This proved to be the tow being pushed by the NEW ORLEANS. The tow was bound upstream and had rounded the bend improperly favoring the bend side, or the right descending bank, in water reserved for downbound vessels such as the QUEMADO LAKE. When the towing lights of the towboat itself were seen indicating a tow ahead, the QUEMADO LAKE sounded a signal of one blast indicating that the downbound tanker would favor the bend along the right descending bank as required, and proposing a port to port passage. The upbound NEW ORLEANS replied with one blast agreeing on the maneuver and passage. Immediately thereafter the red side light on the head of the tow became visible as the NEW ORLEANS swung her tow to her starboard in an attempt to remove the tow from the bend and permit the QUEMADO LAKE to take her proper water as agreed. Accordingly, the QUEMADO LAKE steadied her heading and proceeded to run the bend close to the right descending bank. However, the NEW ORLEANS, having swung her tow to starboard, fell down into the bend as the QUEMADO LAKE was in the act of passing the tow port to port as agreed. The QUEMADO LAKE gave right rudder in an attempt to stay away from the towboat and stopped its engine. In doing so the loaded tanker was driven by the swinging towboat into the shallow water off the bank and when threatened with consequent loss of steerage way, she put her engine on full ahead and steadied her heading parallel to the bank. When almost clear

on its port bow by the port stern of the NEW ORLEANS, which vessel then raked the entire port side of the QUEMADO LAKE doing substantial damage, starting rivets and causing leaks and a loss of cargo from the port wing tanks.

VI.

Nothing that cross-libellant or the SS QUEMADO LAKE or those in charge of her did or omitted to do in any way caused or contributed to the collision, but it was caused solely by the fault and negligence of the NEW ORLEANS and tow and those in charge of her, the agents, servants and employees of cross-respondent in the following particulars, among others, which will be shown at the trial of this cause:

1. The NEW ORLEANS was unseaworthy;
2. The NEW ORLEANS was in charge of inefficient and incompetent personnel;
3. The NEW ORLEANS had no lookout;
4. The NEW ORLEANS was underpowered;
5. The NEW ORLEANS was incapable of handling and safely maneuvering her tow;
6. The NEW ORLEANS' tow was improperly made up, unweildy and of excess size and tonnage for safe navigation;
7. The NEW ORLEANS and tow were improperly lighted;
8. As the ascending vessel, the NEW ORLEANS, was navigating in an unlawful place in the River in the bend of the right descending bank in violation of the long-standing custom which has the force of law;
9. After agreeing to pass port to port, the NEW ORLEANS swung her stern to her port while making the passage,

and into collision;

10. After agreeing to pass port to port, the NEW ORLEANS failed to carry out her agreement;

11. After agreeing to give way to her starboard, the NEW ORLEANS swung her stern to her port and into the QUEMADO LAKE:

12. The NEW ORLEANS failed to stop or reverser her engines;

13. The NEW ORLEANS took no steps to avoid collision;

14. The NEW ORLEANS navigated in disregard of the well-known conditions of current;

15. The NEW ORLEANS should have held back as she was stemming the current and permitted the downbound QUEMADO LAKE to run the bend unencumbered.

Cross-libellant reserves the right to amend this article so as to set forth with greater particularity the specifications of fault hereinabove described.

VII.

As a result of the foregoing, cross-libellant has sustained or may sustain damages in the sum of $65,000.00, consisting of repairs, disbursements, loss of cargo, loss of use, and which includes any amounts which it may be called upon to pay to third persons who allegedly sustained personal injuries as a result thereof, and for all of which cross-respondent is liable.

VIII.

All and singular the premises of the cross-libel are

true and correct, and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

WHEREFORE, cross-libellant prays that cross-respondent, Mississippi Valley Barge Line Company, be cited to appear and answer the matters aforesaid; that there be a decree against cross-respondent in favor of cross-libellant for the damages prayed for, and for interest and costs; that process in due form of law may issue against the towboat NEW ORLEANS, her engines, tackle, apparel, etc., and that all persons having or claiming any interest therein may be cited to appear and answer the matters aforesaid, and that this Honorable Court enter a decree in favor of cross-libellant for its damages aforesaid, with interest and costs, condemning the towboat NEW ORLEANS to be sold to pay the same; and for all general and equitable relief.

Esso Shipping Company

By: Terriberry, Young, Rault & Carroll
By: (sgd) Alfred M. Farrell, Jr.
Proctors for Cross-Libellant
825 Whitney Bank Building
New Orleans, Louisiana.

STATE OF LOUISIANA:

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared:

ALFRED M. FARRELL, JR.,

who, being by me first duly sworn, did depose and say:

That he is a member of the firm of Terriberry, Young, Rault & Carroll, Attorneys for cross-libellant, Esso Shipping Company, in the foregoing cross-libel; that he has read the

foregoing cross-libel and believes it to be true; that affiant makes this affidavit for the reason that cross-libellant has no corporate officer within this jurisdiction.

(sgd) Alfred M. Farrell, Jr.

Sworn to and subscribed
before me, Notary Public,
this 14 day of April,
1953 at New Orleans, Louisiana.

(sgd) Walter Carroll, Jr.,
Notary Public.

...oOo...

CLAIM OF ESSO SHIPPING COMPANY

(Number and title omitted) (Filed: April 15, 1953)

Now comes Esso Shipping Company, the Bareboat Charterer, owner pro hac vice, and bailee of the cargo laden thereon, of the SS QUEMADO LAKE, now libelled herein and upon posting good and sufficient security as agreed, claims the vessel and prays restitution thereof.

ESSO SHIPPING COMPANY

BY: Terriberry, Young, Rault & Carroll
By: (sgd) Alfred M. Farrell, Jr.
Proctors.

...oOo...

MINUTE ENTRY: January 17th, 1955 Christenberry, J.

PRE-TRIAL CONFERENCE HELD

(Number and title omitted)

Pre-trial conferance was this day held.

Present: Selim B. Lemle, Esq.,
Proctor for Libellant

Alfred M. Farrell, Jr., Esq.,
Proctor for Respondent

Trial set for March 11,1955 on Liability Only.

...oOo...

CASE CALLED, HEARING ON LIABILITY ONLY & CONTINUANCE

MINUTE ENTRY: March 14, 1955 Christenberry, J:

(Number and title omitted)

Present: Charles Kohlmeyer, Esq.,
Selim B. Lemle, Esq.,
Proctors for Libellant

Alfred M. Farrell, Jr., Esq.,
Raymond T. Greene, Esq.,
Proctors for Respondent.

This cause came on this day to be tried on question of liability only.

Counsel for Libellant rests on the note of evidence, depositions, etc., annexed. Moves to hold case open for further testimony if necessary - GRANTED

Counsel for claimant files note of evidence, and attachments.

Opening statements by counsel for respective parties.

WITNESSES FOR CLAIMANT:

Carlton F. Trosclair.

On motion of parties all exhibits previously offered are withdrawn.

IT IS ORDERED BY THE COURT that further hearing be continued indefinitely.

...oOo...

NOTE OF EVIDENCE BY LIBELLANT & CROSS-RESPONDENT

(Number and title omitted) (Filed: March 14, 1955)

Proctors for libellant and cross-respondent, Mississippi Valley Barge Line Company, offer, introduce and file in evidence:

1. Depositions of:

Roy J. Clay,
Bernard L. Zumwalt, and
William G. Glover.

2. Exhibits:

Clay 1, being tow diagram;

Clay 2, being aerial chart;

Clay 3, being Map No. 48, 20th Edition, Flood Control and Navigation, United States Engineers;
Clay 3a, being Map No. 49, 20th Edition, Flood Control and Navigation, United States Engineers;

Clay 4, being photostat (both sides) of "Report of Accident Involving Damage to Boats, Barge or Property" to Mississippi Valley Barge Line Company; and

Clay 5, being photostat of daily log of the M/V NEW ORLEANS for June 20, 1952.

All objections made when depositions were taken are hereby reiterated to the same extent as if copied herein in full.

LEMLE & KELLEHER

BY: (sgd) Selim B. Lemle
Proctors for Mississippi Valley Barge Line Company, Libellants and Cross Respondents.

...oOo...

TESTIMONY OF ROY J. CLAY

(Number and title omitted) (Filed: October 19, 1955)

APPEARANCES:

For the Libellant: LEMLE & KELLEHER
National Bank of Commerce Building
New Orleans, Louisiana

By: SELIM B. LEMLE, Proctor

For the Respondent: TERRIBERRY, YOUNG, RAULT & CARROLL
Whitney Building
New Orleans, Louisiana

By: ALFRED M. FARRELL, JR., Proctor

STIPULATION

It is stipulated and agreed by and between the parties that the testimony of the witness, ROY J. CLAY, may be taken down in shorthand (Stenotype) by Helen R. Dietrich and by her transcribed, the formalities of signing, sealing, certification and filing being waived, all objections, save objections to the form of a question, being reserved to the trial of the cause.

It is further stipulated that opposing counsel shall be furnished with a carbon copy of the transcript without cost to him, the cost of taking the testimony and transcribing same to be a taxable disbursement.

It is further stipulated that the witness may be sworn by Helen R. Dietrich, Notary Public in and for the Parish of Orleans, State of Louisiana.

...oOo...

ROY J. CLAY: a witness called by and on behalf of the Libellant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEMLE:

Q Captain, give us your name, your age, your residence and your occupation.

A My name is Roy J. Clay. I am 54 years of age. My residence is 366 Tulip Drive, Webster Grove 19, Missouri, I am a master/pilot of the Motor Vessel NEW ORLEANS for the Mississippi Valley Barge Line Company.

Q And, Captain, do you hold any licenses issued by the United States?

A I do.

Q What are they?

A I have a master and pilot's license, first class, unlimited tonnage, license to act as pilot over the Missouri River from its mouth to Kansas City, Missouri, the Illinois waterways from the mouth of the Illinois River to Joliet, Illinois, the Mississippi River from the mouth of the Illinois River to New Orleans, Louisiana, the Ohio River in its entirety.

Q When did you get your first license

A September 18, 1918.

Q And what was that?

A Pilot's license to pilot on the Missouri River -- the Missouri and Mississippi Rivers -- from St. Louis to Kansas City.

Q And how long have you held a license to pilot the Mississippi River from New Orleans north?

A Well, I got those approximately two years later, which would have been in 1920.

Q Have you been piloting under those licenses?

A Continuously from the time of being issued until about ten years ago.

Q And then what was your situation?

A I was in the office as Personnel Director or something on that order.

Q And when did you go back to piloting?

A I went back to piloting about October of 1952.

Q If I told you that this collision occurred-- the collision which we are about to investigate with the QUEMADO LAKE occurred in June of 1952, when would you say you went back to piloting?

A Well, I will have to retract it and say I went back to work in October of 1951.

Q When did you go back on the NEW ORLEANS?

A About November, I would say -- yes, 1951.

Q Have you been on her since?

A Continuously.

Q Will you describe the NEW ORLEANS to us? What is she, her size, the general characteristics.

A Well, she is a motor-driven vessel powered by two General Motors-type Diesel engines, approximately 3600 indicated horsepower. She is 215 feet in length overall, 43 feet wide, hull depth of about 10 feet, I believe.

Q And is she single-screw or twin-screw or what?

A Twin-screw, pilot-house control of the engines.

Q Now coming back to her horsepower, you said "indicated horsepower." Was that for one engine or two?

A That is the total indicated horsepower. However, the horsepower used is usually between 2800 and 3200 horsepower.

Q By that you mean you operate the reserve horsepower or what do you mean?

A There is always reserve horsepower. By that I mean you never work that type of engine up to its full rated capacity. It wouldn't take it -- the same as your automobile wouldn't take operating at its full capacity at all times.

Q How many rudders does the NEW ORLEANS have and what kind of rudders are they?

A She has two steering rudders. By that I mean rudders used for steering the vessel going forward. And two backing rudders. That is explained by their use for maneuvering the vessel in backing.

Q And how are those rudders located with regard to the propellers?

A Well, the forward end of the steering rudders, I would say, are within -- oh, 3 feet of the wheel, and the after end of the backing rudders are likewise.

Q Well, the backing rudders are forward of the wheel, and the steering rudders are aft of the wheels. That is correct, isn't it?

A Right, right.

Q Were you on board the NEW ORLEANS on June 20, 1952, when she was in collision with the QUEMADO LAKE?

A I was.

Q In what capacity?

A Master and pilot.

Q You started your voyage where?

A Well, the voyage originated at Coyle's, New Orleans, Louisiana.

Q Can you tell us how many barges you had in tow?

A No, I can't tell you but the log for that day and the diagram of the tow that is usually furnished the company will show it.

Q Did you make for the company a tow diagram at that time?

A Yes, sir, I did.

Q (Producing document) I show you a tow diagram on a sheet of Mississippi Valley Barge Line inter-office correspondence, marked "Office -- M.V. -- New Orleans -- 6/20/52", and I ask you whether or not-- first I ask you who drew that.

A I did.

Q When?

A According to the date, on 6/20/52.

Q I ask you whether or not that is correct.

A To the best of my knowledge.

Q And where were you when you made it?

A Well, the exact location -- it is usually made on the deck in the pilot house where I am looking at the tow.

Q Are you able to say whether or not that is what you were doing at this time?

A I don't quite understand the question.

Q Are you able to say whether or not when you drew that you were looking at the tow? Did you draw it from memory or how?

A I drew it looking at the tow in order to put the barges and numbers in the proper location in the tow.

Q Captain, are you able to tell us the overall dimensions of the NEW ORLEANS and of these various barges?

A I am.

Q Will you tell us the size of the four barges in the first tier next to the NEW ORLEANS, being M/V 366, CT-420, CT-507 and CT-353?

A 175 by 26 feet.

Q And the next tier, being CT-434, ECE-823, CT-500 and ORL-36?

A 175 by 26.

Q And the next tier, MV-111, CT-314 and CT-304?

A 132 by 35.

Q And MV-601?

A 195 by 35.

Q MV-715?

A 195 by 35.

Q MV-603?

A 195 by 35.

Q MV-605?

A 195 by 35.

Q MV-123?

A 132 by 35.

Q And MV-116?

A 132 by 35.

Q Can you tell us whether or not these barges were loaded or light?

A To the best of my knowledge, they were all loaded.

Q And what size tow did this constitute for the NEW ORLEANS as to the size tow she customarily carried?

A That is considered a normal tow for the NEW ORLEANS.

R. LEMLE:

I ask that this sketch of the make-up of the tow be marked "Clay 1", and I offer it in evidence.

(Whereupon, the document identified by the witness was marked "Exhibit Clay 1.")

Q Captain, we are investigating the collision, as I said, with the QUEMADO LAKE. Can you tell us where that collision occurred?

A Well--

Q I mean as to miles, river miles -- mile what in the river?

A I can't quote you the miles. The miles will show on your Mississippi River map furnished by the Engineers there and the location as I speak of it was Brainger Point, Rateau Light-- and what is the name of the other light over there?

Q You may refer to the chart.

A (Referring to chart) Rateau Light and Riverton Light, yes.

Q You have indicated with your thumb Brainger Point, which is shown on the chart as "Sugar House Point."

A It has both names, Sugar House Point and Brainger Point. Originally I knew it as Sugar House Point.

Q Where had you last stopped before that collision?

A At Gramercy; Louisiana.

Q And what did you do at Gramercy, Louisiana?

A Well, actually we were tied up about one-quarter of a mile below Crescent Light to make pick-ups and deliveries at Gramercy Sugar Refinery. That location is better located by the Lutcher Ferry, just below the Lutcher Ferry. Shall I show it to you? (Pointing to chart) Here is Gramercy and here is Crescent Light. Yes. We tied to trees right along about there to make our pick-up and deliveries across the river to Gramercy Sugar Refinery.

Q And what mileage does Crescent Light show on the chart?

A Looks like 146-1/8, doesn't it? Is that right?

Q Yes, sir. Have you any way of telling when you departed from that point?

A Yes, sir, I have.

Q What is that?

A By looking at the daily log.

Q (Producing document) I hand you a photostat, Captain, and ask you if you can identify that.

A Yes, I do.

Q What is it?

A Well, it's a daily log of the vessel for 6/20/52.

Q What vessel?

A Motor Vessel NEW ORLEANS.

Q Whose handwriting is it written in?

A It's in mine.

Q Will you look at that chart -- at that log-- to refresh your memory and tell us what time you left Gramercy or the place where you were tied up opposite Gramercy?

A Well, this shows that we were at Gramercy from 12:45 P.M. to

2:30 P.M., I believe it is.

Q Your clock was kept on what time?

A Central Daylight Saving Time.

Q Do you remember independently of your log what time you had the collision with the QUEMADO LAKE?

A I remember it being 9:15 without looking at the log, 9:15 P.M.

Q What mileage have you logged as being the mile where the collision occurred?

A Mile 897.6. Now that is by our own mileage which is a reproduction of the lighthouse mileage of several years ago. I wouldn't attempt to say what year.

MR. FARRELL:

Is that below Cairo?

THE WITNESS?

Below Cairo, yes, sir. That chart shows your mileage north of the Passes.

Q Well, Captain, come refer to the chart, the Mississippi River Chart, the Engineers' Chart, being Map No. 49, issued in 1952, issued by the United States Engineers, of the 20th edition of Flood Control and Navigation Maps of the Mississippi River and tell us the mileage.

A Well, (pointing to chart) here is the light. It happened along in this location, so whatever this mileage is here--what is that? 173?

Q Yes.

A 173--no, 171. That 173 there.

ctually along about in there (pointing to chart).

Approximately 172.5?

About mid-distant between this light and this one (point-
r), yes, sir.

Approximately 172.5?

Right.

Captain, what time that night did you come on watch?

6:00 P.M. All times are Central Daylight Saving Time.

Who else was on watch with you?

Well, there was an engineer and a striker on watch in the
gine room. There was a mate and four deckhands on watch in
e deck department.

Do you know where they were before and at the time of the
llision?

No. I don't know exactly where they were, no, sir.

Who was handling the wheel?

I was.

I believe you have said that the vessel is pilot-house con-
olled?

That is right.

Does it require any action at all by anyone in the engine
om to change either the speed or direction of the engines?

No, sir, it does not.

When did you first see the QUILMADO LAKE?

Well, I saw her the instant she was visible around Brainger
int, coming off, shaping over Brainger Pt.

And approximately how far from you?

A Approximately a mile.

Q What lights were the NEW ORLEANS and her tow showing?

A Well, we had the usual red and green lights on the head of the tow, plus the amber light and the usual red and green light on the chimnies to show forward. I almost forgot to tell the Coast Guard this. I had the red lights burning on the stern mast.

Q They show astern only?

A Astern only.

Q What lights did you see on the QUEMADO LAKE when you saw her?

A The first lights that you see on a ship is the bright white lights on the mast and then the red and green light.

Q And when she emerged under the point, from under the point, what lights did you see then?

A I saw her port running light and naturally still seeing her white light, you see.

Q And what course were you on approximately? Where were you in the river at the time you first saw the QUEMADO LAKE?

A Well, I was running in -- I am very definite of what course I was travelling. I am very definite about it because I had just looked aft and seen that my stern was approximately 50 yards above or upstream of the Riverton Light and I was holding approximately 50 yards upstream of the Rateau Light and travelling that course that is approximately the middle of the river when you are about midway from one light to the other.

Q Now what course was the QUEMADO LAKE on when you first saw her?

A Well, he would have been running from -- we term it "open from Brainger Point Light to Rateau Light."

Q Stats whether or not that is the custom for a downbound ship.

A That is right.

Q What speed were you making?

A I guess we were making about 3½ miles per hour.

Q Over the ground?

A Over the ground.

Q With approximately how much current?

A Probably about three-mile-an-hour current.

Q Fair or a head?

A I don't understand.

Q Bucking the current or on your stern?

A Bucking the current.

Q Now what would be the approximate speed of the NEW ORLEANS with that tow and headwater?

A That would be in the neighborhood of 7 miles an hour through dead water.

Q Are you able in any way to confirm the speed that you were making by any distance that you had travelled?

A Well, you can. We departed from Gramercy at a certain time which is shown by our log, and, of course, you know the time the accident occurred.

Q Now, Captain, will you please tell us in your own words what happened after you saw the QUEMADO LAKE down to the time the collision occurred.

A Well, the first thing was instantly when we were visible

of each other, I blew one long whistle, and I believe it would be as near truthful as possible to state that he was actually blowing the whistle and answering me at the time I was blowing or a second or two later, and answered my one long whistle.

Q Are you able to say what speed, from observing him, he was travelling at?

A Well, naturally I don't know what his speed was, but you can fairly well arrive at the speed that he was making by the length of time it required for him to get down to where the collision occurred. In my opinion, he was making around 17 miles an hour.

Q And how long do you think it was from the time you saw him until the collision occurred?

A Approximately two minutes.

Q How far had your tow moved in that length of time?

A Oh, not over the length of itself.

Q Captain, I show you a blown up photograph, aerial photograph of the Mississippi River for the stretch from the Donaldsonville Light to -- down to Orange Grove Light. I ask you if that covers the stretch of the river in which the collision occurred. Come around here and look at the photograph on the desk here.

A That is right, yes, sir.

Q Captain, I call your attention to the fact that on this map, No. 48, issued by the Engineers, 20th Edition, 1952, Flood Control and Navigation Maps, Wade Hampton Mile 171.8 appears upstream from Burnside Light, Mile 170.6, whereas on the photostat the Wade Hampton Light appears downstream from the Burnside Light

and I ask you where that particular light was on the night of the collision, that is, June 20, 1952, whether it was where it is shown on the photograph or where it is shown on the Engineers' chart.

A I believe it is still down here, but originally for years it set right along in that neighborhood -- here. (Pointing to map).

Q Now you say "in that neighborhood here." Just so it will show, will you mark that with an "X" with a yellow crayon?

(The witness marked the chart as requested by counsel)

A To the best of my knowledge.

Q I don't think it is material to anything, but just a discrepancy in the maps, and I wanted to ask you where it was at that particular time. Now, Captain, I am going to hand you two models to scale or substantially to scale of this chart--it won't make any difference in your testimony--practically to scale--

MR.LEMLE:

I believe you will concede that, Mr.Farrell?

MR. FARRELL:

I concede they are approximately to scale.

Q -- and I ask you if you will place--

A May I correct myself on something if I am in error? Are you asking me if this light was here at the time of the accident?

Q Yes.

A I won't say whether it was. For years it was. I didn't pay any attention at the time of the accident.

Q You are not prepared to say whether Wade Hampton Light was

where it is shown on the photostat or where it is shown--

A As I remember, it has been here for quite some time. I don't remember seeing it back here when I went back to piloting again. For years and years it set in that locale. Whether it was there that night at the time of the accident, I don't know, because it didn't have any meaning to us whatsoever.

Q You are not now prepared to say whether it was where it is shown on the photograph or where you have placed the yellow mark on the map where you say it set for years?

A That is right. I am not prepared to say.

Q It doesn't make any difference to the story you will tell or the pilotage where it was?

A None whatsoever. It had no meaning to us.

Q Will you take this model which represents your towboat and tow, and will you place it on the map where you say it was when you first saw the QUEMADO LAKE, and take this model, which is to scale for the QUEMADO LAKE, and put it on this chart where you say it was when you first saw it. Now you may use a straight edge, dividers, anything else you may wish, and the scale of the map in the lower left hand corner, and when you place it describe where it is and why you have put it there.

A I don't think I need dividers. I will do the best I can. In my statement I have said we were running from 50 yards above this light to 50 yards above that one.

Q Now "this" and "that" don't show on the record.

A O.K., I will repeat. In my statement I said we were running from 50 yards above Riverton to 50 yards above Rateau Light. O.K.?

Q Yes,sir.

A (Placing model) Momentarily I will lay that there. Well, I said I was about midway between Riverton Light and Rateau Light, so that puts her about midway between the two lights. I said the QUEMADQ LAKE was running from open on Brainger Light to Rateau Light. (Placing model) To the best of my knowledge, that is about the position they were in at the time I first saw the ship.

Q Was that before or after you blew the one-blast whistle?

A Well, the one blast of the whistle was blown, I would say, in 10 or 15 seconds after I sighted the vessel, so that was about the location at the time the whistle was blown and the ship was sighted.

Q How far would you say -- what is your estimate that the NEW ORLEANS and her tow was from the West Bank of the River? When I say "West Bank," I mean the right descending bank.

A Well, I would say we were -- this is strictly opinion-- I would say we were 500' from the west right descending bank.

Q Captain, taking care not to move those models, will you please outline them with that red crayon for me.

A Outline the models?

Q Yes.

A I will do the best I can.

(Whereupon, the models as placed by the witness were outlined in red crayon by the reporter).

Q Captain, will you write "Position 1" under each one of those?

(The witness complied.)

Q Now, Captain, will you take the same model of your towboat and tow and place it in the position in which you say it was when the collision occurred.

A Well, I said that the tow hadn't moved more than the length of itself. I'd say it was in approximately that position (placing model).

Q That is the position you say it was in when the collision occurred?

A That is right.

Q O.K. Will you mark that with a yellow crayon, outlining the models.

(Whereupon, the reporter outlined the models as placed by the witness.)

Q Now will you take the model of the QUEMADO LAKE and place her in contact with your vessel or tow or whatever she did contact. By the way, where was the point of contact?

A The point of contact was on the towboat, and it was approximately-- it was on the tow boat on the port stern side, approximately 30 feet from the stern of the vessel.

Q At what angle?

A Well, the ship hit me at an angle of approximately 35 degrees, I guess.

Q Will you place the model of the QUEMADO LAKE on the chart in contact with your vessel as you say it hit.

(Whereupon, the witness placed the model on the chart, as requested).

Q Now will you outline that with the yellow crayon.

(Whereupon, the reporter outlined the model as placed by the witness.)

THE WITNESS:

If the lady could make that corner a little sharper, I think it would be a little bit better.

(Whereupon, the reporter complied with the request of the witness to make a sharper corner in outlining the model.)

THE WITNESS:

I want to be sure that the stem of the vessel, of the ship, did not hit me. She must have been at an angle about like that, I guess.

Q Now, Captain, will you write "Position 2" under those

(The witness complied.)

Q Now, Captain, state whether or not you had the QUEMADO LAKE under observation from the time you first saw her, as shown in Position 1, down to the time of the collision.

A Did you ask did I have her under observation?

Q Yes.

A Yes, I did.

Q Can you put in there for us, between this Position 1 and Position 2, one or two intermediate positions to show us how the ship came to -- trace the course of the vessel -- or would it be preferable for you to draw a dotted line to show the course of the vessel? Which do you prefer?

A It doesn't matter to me.

Q Suppose you draw a dotted line.

A A dotted line of the sailing line of the ship?

Q Correct.

A May I use the ruler to some extent?

Q You may use the ruler to some extent.

A (Ruling in dotted line) Mind you, I am not a ship pilot. He comes over in this bend--

MR. FARRELL:

Let me just interject here: Captain, that is from what you personally saw and not from what you believe to have been the course by your experience?

THE WITNESS:

Well, it is what I believe to have been the course, yes sir.

MR. FARRELL:

Particularly what you saw?

THE WITNESS:

Yes, sir. (Continuing drawing course line) Now how far do you want me to go with this?

MR. LEMLE:

All the way down to the point of collision as near as you can. (The witness complied.) Will you mark that "Course of Ship"? (The witness complied.) Will you sign your name on this chart? (The witness complied.) And put the date.

THE WITNESS:

September 29, 1953.

MR. LEMLE:

In connection with the testimony of the witness, I offer in evidence the blow-up of the aerial map on which the witness has just marked, and ask that it be marked "Clay 2".

(Whereupon, the aerial chart was marked for identification "Clay 2".)

Q Now, Captain, tell me: did you make any speed change between the time you first saw the QUEMADO LAKE and exchanged passing signals with him down to the time of the collision?

A I did not.

Q And why not?

A Well, I didn't because I had no idea there was any collision about to occur.

Q When he passed the head of your tow, how far off would you estimate he was?

A I estimated he was 100 yards from -- 100 yards or 100 feet-- I forget which I did say in my statement -- when he passed the head of the tow.

Q What do you now estimate it as?

A A hundred yards.

Q Did it appear to you as if there were anything unusual about the passing?

A The unusual appearance of it didn't register with me until the collision was actually about to happen, and then I wondered why he was continually steering towards port, towards me.

Q Well, based on your experience of piloting, have you any theory as to what might have happened or did happen?

MR. FARRELL:

Object to the surmisal.

MR.LEMLE:

You may answer the question.

A As to my opinion how or why the accident occurred?

Q Yes.

A I think the ship pilot either overran the distance coming over to Rateau Light and got too close to the bank and caused a bank suction or he seen he was too close to the bank and pulled the ship hard to the port or nearly so, steering away from the bank, and overdid it. By that I mean he steered to the port too long, and when he did see that he had done that he didn't have steerage enough to steer back to the starboard to avoid hitting the NEW ORLEANS.

Q Was there anything about your action, the action of your tow, tug and tow, that was in any way unusual or out of the ordinary?

A No, I don't think so.

Q Did you make any rudder change from the time that you blew him to the time of the collision?

A Yes, I did.

Q What did you do?

A Instantly when I saw the ship I pulled my boat hard to the starboard for a short period of time, maybe fifteen seconds, which is normal practice to give as much width for the ship to travel through as I possibly could, and then instantly pulled the rudder back on center or to the port maybe five degrees to steady her up so as to be moving perfectly straightforward and not having any swing in her.

Q These two positions that you have drawn as Position 1 and Position 2 on this chart, do they represent to the best of your knowledge the headings of your flotilla at the times that they

represent?

A Best of my knowledge, that is the location and the heading of the vessel at the time I sighted the ship and at the time the collision occurred.

Q Are you familiar with the Engineers' Chart issued by the United States Engineers for navigation of the river at that point?

A. Yes, I am.

Q Can you tell us where the steering line for deep draft vessels lies between Brainger Point Light and Rateau Light and just beyond?

MR.FARRELL:

Object to his opinion about the steering line for deep draft vessels on the ground that he is not qualified to express an opinion on that.

MR. LEMLE:

I submit the witness holds an unlimited license.

MR. FARRELL:

Deep draft vessels?

MR. LEMLE:

Unlimited. And is perfectly qualified.

THE WITNESS:

May I make some defense of myself in that respect? The majority-- a number of the ship pilots piloting ships down there have steered from me at one time or another to learn the river.

Q Where is the steering line?

A. To my knowledge, the steering line is from Rateau Light to--I have to keep looking at the map to remember the name of the light. You want the steering line?

Q I want the steering line from up here (pointing to chart).

A From here it's from open on Brainger Light to Rateau Light to Riverton Light. As further proof of my opinion, that is why I was running 50 yards above Riverton Light to 50 yards above Rateau Light, so I would normally be out of the traffic lane of ships when I am meeting them.

Q Captain, I show you Map 48 of the 20th Edition of the Flood Control and Navigation Maps of the Mississippi River, and I ask you what that red line shown on this chart is, if you know.

A Sailing line.

Q The red line which I have been referring to is the channel line?

A Yes.

MR. LEMLE:

Also I offer in evidence Map No. 48 and ask that it be marked "Clay 3".

(Whereupon, the map, No. 48, 20th Edition, Flood Control & Navigation U.S. Engineers, was marked for identification "Clay 3".)

MR. LEMLE:

It is stipulated that according to Map 48 of the 20th Edition, 1952, Flood Control & Navigation Maps of the Mississippi River, Crescent Light is shown at Mile 147.8.

Q Coming back to that location, where with regard to that light did you say you had your tow tied off and departed from?

A About one quarter of a mile below, downstream from that light.

Q Captain, do you remember the name of the mate, the engineer, the striker and the four deckhands who were on watch with you?

A I can't recall the names of anyone except the engineer, the chief engineer, who was Zumwalt.

Q Will you state whether or not you conducted an investigation to see what member or members of your crew had been eye witnesses to the accident besides yourself?

A It seems to me there was a deckhand claimed to have witnessed the accident from the forward port boiler deck bow of the vessel.

Q Do you recall his name?

A No, sir, I can't.

Q Do you know whether any engineering officer claims to have seen the accident -- or you don't know?

A The chief engineer saw it.

Q Do you know of anybody else?

A No, sir, I don't.

MR. LEMLE:

I tender the witness, and I also tender a photostat of the log of the NEW ORLEANS for June 20, 1952.

CROSS - EXAMINATION

BY MR. FARRELL:

Q Captain, did you have a lookout?

A No, sir, we did not.

Q What is the reason why the sailing line for downbound vessels runs into the bend at Rateau Light?

A That sailing line that I indicated there is the sailing line for ships because it's the greater depth of water and they draw considerably more water than the river craft does, as we speak of them.

Q What was your towboat drawing?

A Well, she was drawing not to exceed 9 feet.

Q And what was your loaded tow drawing?

A Not to exceed 8 feet.

Q And isn't there ample depth for your tow within 300 feet of the point itself across from Rateau Light?

A Maybe-so, but I wasn't up there at the time of the accident.

Q I understand that from the diagram you have drawn of your position, but the answer to my question is what -- that there is ample depth for your tow within 300 feet of the point itself?

A Well, there probably was.

Q Well, let's take a look at the Hydrographic Survey Map prepared under the direction of the Mississippi River Commission by the Corps of Engineers, published July of 1952, specifically Map 31. Are you familiar with the depth contours shown on this type of map?

A No, sir, I am not.

Q Well, I call your attention to the figures in column form interspaced along the river, and, as the foot-notes explain, these contours are expressed in feet and refer to the depth above mean low water.

A Yes.

Q You are generally familiar with this type of information from your experience?

A Yes, sir.

Q Now leaving aside for the moment your testimony that you had not yet reached Sugar House Point itself, let's leave that aside, and I call your attention to the depths shown off the point, off the bank itself, and to the 31-foot depth, for example, which appears to be approximately 200 feet off the bank at the point itself. Do you follow that with these dividers, Captain Clay?

A Yes, I do.

Q Now, generally speaking, is that information which you had at that time that that much water was off the point on your right hand side?

A I imagine there was that much water there.

Q And from that 31-foot marking the depths increase rather radically out to 48 feet and then to 67 feet and then to 71 feet and so on, moving out about 400 feet off the point. Isn't that so, Captain Clay?

A That is right.

Q So that there is no question in your mind that you could have run under the point, is there, sir?

A Probably would have when I got up to that point, sir.

Q You had intended to run up to the point?

A I don't say that I had intended. I say I might have done so when I got up to that point.

Q Well, what is the normal manner in which an ascending vessel is to round a bend across from which is a pronounced point?

A Speaking of a ship or a towboat?

Q Any vessel ascending the Mississippi River.

A Well, you have got to make clarification of it. An ascending ship light, not loaded, would run that point close upstream ascending. A loaded ship upstream would run that point wide over in the bend upstream.

Q And you drawing ten feet?

A I would go around that point about the middle of the river.

Q Is that the normal manner in which an ascending tug and tow navigate the point?

A Yes, sir.

Q Now why did you, as you put it, "instantly pulled hard to starboard" on your rudder when you first saw the QUEMADO LAKE?

A I think I already said I did so to give any additional clearance that I might be able to give to the ship, and that was only for a short period of time, probably 15 to 30 seconds at the most.

Q And what is the descending vessel required to do when approaching a bend across from which is a point?

A The descending vessel is supposed to continue on its course on over into the bend if one whistle has been blown for a passing whistle at this particular point.

Q The descending vessel is to run the bend?

A The descending vessel is to run the bend, right.

Q And the ascending vessel to run the point?

A The point or somewheres in the neighborhood of the point, yes, sir. Not run the point, mind you -- not run the point closely -- I will put it that way.

Q When you gave a right rudder, were you attempting to shape up to run the point?

A No, sir, no, sir.

Q Were you attempting to shape up to favor the point side?

A I was only intending to get a little further towards the point, maybe the width of the tow, which is probably 105 feet.

Q Well, is it correct to say that the ascending vessel is required to favor the point side of the river?

A No.

Q Now, Captain, in your direct testimony you estimated that you were about at Milepost 173.8 when you first saw the QUEMADO LAKE. Did I understand you to say that?

A We will have to refer to the map.

Q Well, that was what I recalled your saying. Don't you recall that?

A I said that I was midway between Rateau Light or thereabouts and Riverton Light, I believe it is, when I first saw the QUEMADO LAKE.

Q Well, Mr. Lemle had referred you to Map 48 of the Corps of Engineers, and I think an attempt was made to find out approximately the milepost where you were when you first saw the QUEMADO LAKE. Could you tell us now approximately the milepost

A Well, there wasn't any milepost exactly where I was, at my location. My location, I repeat again, was midway or thereabouts between the Rateau Light and the Riverton Light, and there is no milepost between those two mileposts.

Q Well, do you remember testifying to the Coast Guard that at the time you first saw the QUEMADO LAKE you were about .3 of a mile below Rateau Light?

A Yes, I think I said that.

(Discussion off the record.)

A (Continuing) Was I there or was I to it? That is the question.

Q That is what you told the Coast Guard, that you were .3 of a mile below Rateau Light when you first saw it.

A Well, I may have said that I was .3 of a mile-- I am strictly guessing again, but I am not guessing when I say I was in the location that I have pointed out to you.

Q Well, at the time you gave this testimony, your best estimate was .3 of a mile below Rateau Light. Is that correct, sir?

A I am not saying that .3 of a mile is correct. That is probably what I said. I am not denying I said that.

Q Well, your recollection at the time you gave this testimony just after the collision was better than it is today, two years after, isn't that so?

A Probably so.

Q Now when Mr. Lemle asked you about the length of the individual barges, I don't think he asked you the overall length of your tow. Would you care to add those up and tell

us what the overall length of your tow was.

A (Computing) The overall length, including the towboat, was 1,087 feet.

Q And you blew the one blast immediately upon sighting the QUEMADO LAKE?

A That I did.

Q And then you advanced in the water a tow's length before the collision?

A That is correct.

Q So that from 172.7, which I gather you were at the time you blew the blast, where would you have advanced to at the time of the collision?

A A tow's length up the river.

Q About another thousand feet?

A From the time the passing signal was blown until the collision occurred, we moved upstream approximately the length of the tow, which is 1,087 feet.

Q Captain, just after the collision, you logged the approximate position of the collision, did you not?

A Yes, sir, I think so.

Q And at that time you expressed it in miles below Cairo?

A That is right, yes, sir.

Q And it was 897.6?

A Yes, sir.

(Discussion off the record.)

MR. FARRELL:

For the record, the witness has produced United States

Department of Commerce Light List, Mississippi and Ohio Rivers, 1934, in which Mile 897.6 below Cairo is shown to be Rateau Light.

Q Now, Captain, is it not a fact that this collision actually occured just below Rateau Light?

A No, sir. In my opinion, the collision occurred at least quarter of a mile -- the head of the tow must have been at least a quarter of a mile south of Rateau Light.

Q Why didn't you put that in the log book at the same time you logged this entry?

A You don't go too much in detail in putting things in your log. A lot of times we fail to get things in the log that are really important, but to us at the time being they don't seem too important.

Q You mean to say whether the collision occurs at Rateau Light or a quarter of a mile below Rateau Light isn't something that you ordinarily would log?

A You would attempt at least to give, to the best of your knowledge at the time being, an exact location.

Q And you gave that as being Rateau Light, namely 897.6 belo Cairo?

A What other mileage could I have given my office to identify the location.

Q Well, you now state it was a quarter of a mile below Rateau?

A Sure I do, but may I explain it in this way: we give positions regularly every so often by radio. We may be a

half a mile below Rateau Light and we will tell the office 897.6. We don't figure out how many yards we are south of that when we give our location or above there.

Q I am not talking about yards. I am talking about whether or not you were a quarter of a mile below Rateau Light. Did you believe that at the time you made this log entry, sir?

A Yes, and I still believe it.

Q Well, let me ask you this about your log entry? You indicate in that column marked "Average Miles Per Hour" that you made 5.7 miles per hour. Would you tell us how that was arrived at?

A Well, that was arrived at for the full period of time. You see, we came from New Orleans. We left New Orleans with less barges than we had at the time of the accident. Therefore, we travelled faster from New Orleans to Gramercy than we were travelling at the time we travelled from Gramercy to the time of the accident because of the additional barges added to the tow at Gramercy.

Q Well, could you compute for us your speed between 2:30 and 9:15.

(Discussion and computation off the record.)

MR. LEMLE:

The witness has stated that he left a quarter of a mile downstream from the Crescent Light, 147.8, at 2:30 p.m., so that he departed from Mile 147.6 at 2:30 p.m., and assuming that the accident occurred at Mile 173 at 9:15 p.m., that would be 25.5 miles in six hours and 45 minutes. 6.75 into 25.5 gives 3.77.

Q So, Captain, as I understand it, you insist this collision took place a quarter of a mile below 173?

A The head of the tow was at least a quarter of a mile below 173.

Q How far off the right descending bank do you believe the QUEMADO LAKE ran?

A Are you asking me how far off was the QUEMADO LAKE from the right descending bank when she was the closest to it?

Q Yes.

A I couldn't tell you how far off she was from the bank.

Q Well, didn't you tell us on direct examination that you were of the opinion that she took suction from the bank?

A Yes, sir, that is my opinion.

Q Well, can you tell us how near to the bank she would have come at this locality in order to have taken suction?

A I am not going to attempt to say how close he got to the bank to create that suction, no, sir.

Q Well, what did you see that would have given you the impression that she got so close to the right hand bank as to create suction?

A I have already testified that I think two things happened: (1) he got too close to the right descending bank and created a suction; or else he got too close to the right descending bank and noticed he was very close and gave her a hard port rudder, and he kept that course too long and couldn't overcome the steerage to the port in time to avoid colliding with the Motor Vessel NEW ORLEANS.

Q You saw the QUEMADO LAKE close to her right hand bank?

A I did not see how close she was to the right descending bank.

Q She passed your lead barge at a distance off of either a hundred yards or a hundred feet, you are unable to say which?

A I think I said she passed it 100 yards off the head of the tow.

Q And that was a quarter of a mile below Rateau Light, in your opinion?

A Yes, sir, that is right.

Q Was it while passing your tow that you think she took suction from her right hand bank?

A Yes, I would say so. She either took suction or, I repeat again, he thought he was too close to the right descending bank and gave her a hard port rudder and failed to correct the hard port rudder in time to stop her from steering to the port, which caused the collision with the NEW ORLEANS.

Q Well, Captain, I am going to refer you again to this map, No. 31, showing the depths in this bend, and let's take your first assumption, namely that she took suction. Now I ask you to tell me where along the right hand bank at a distance below Rateau Light of a quarter of a mile is the water so shallow as to cause this ship, which I will tell you was drawing 31 feet aft, to take suction. I want to tell you this, Captain Clay: the purpose of my line of questioning is to indicate to you that if that happened the collision took place very near Rateau Light and not a quarter of a mile downriver. Now would you examine the depth along the bank and answer my

question to the best of your ability.

A Your question is: if the collision was caused by a bank suction, where did the bank suction occur to the ship?

Q Yes. Isn't it a fact that he would have taken bank suction just under Rateau Light and not farther down river?

A No, sir, that is not true, because he wouldn't have come that close to the Rateau Light before pulling down.

Q Well, what did you see him do?

A He was -- oh--

Q I call your attention to your drawing on Mr. Lemle's aerial photograph in which you drew in his course line and in which you put him very close to the bank adjacent to Rateau Light.

A Yes, and that is how far out--

Q Well, using the dividers on the scale of the aerial photograph, you have put him--

A He would have went over there. There you are again on the drawing. I didn't use the dividers. Maybe he didn't get quite that close.

Q You would have put him about 75 feet off his right hand bank when just below Rateau Light?

A He come over there fairly close. Now if he stayed that close in there and he came over there fairly close he would have created a suction, and you see where I show him leaving the bank here?

Q All right. Now let's take it from the point at which you show him leaving the bank, namely a short distance upriver from the head of your tow, and go back to Map 31, showing the

depths along the right descending bank. Isn't it a fact that there is some 96 feet of water in that area?

A That is right.

Q And isn't it a fact that just below Rateau Light there is only 21 feet of water?

A Yes, sir.

Q Well, now, to get back to your first of the two alternate assumptions, that he took suction, assuming that he did take suction, isn't it a fact that the depths show that he would have been in shallow water when just below Rateau Light rather than farther downriver?

A Not necessarily so. You go back to your map and you have got 21 feet there. He could have been maybe just a few feet from that and the suction hadn't taken effect of him yet.

Q Captain, did you ever see the QUEMADO LAKE's green light after she passed Rateau Light?

A I can't recall now. After she passed Rateau Light?

Q Yes, sir.

A I suppose I did.

Q You did?

A I suppose I did.

Q Well, did you blow the danger signal if you saw her green light, as you supposed you did?

A No, I couldn't have seen it.

Q You couldn't have seen it? Is that your answer, sir, that you could not have seen the green light?

A Wait a minute now. You got me confused

Q Well, take your time.

A The green light is on the right, starboard. I couldn't have seen it until he was right in this position probably then.

Q All right. Let's place this model of the QUEMADO LAKE on its course line that you have drawn for her. Would you draw this in?

(Whereupon, the reporter outlined the model as placed by the witness.)

Q I am going to ask you to draw in with a green pencil a position which I will ask you to mark "1-A.

(Whereupon, the reporter outlined the model as placed by the witness, and the witness wrote in "Position 1-A.")

Q Now, Captain, isn't it a fact that if the QUEMADO LAKE was in Position 1-A that you would have seen her green light?

A Sure. I haven't said I didn't see it.

Q I understood you to correct your testimony.

A I haven't said that I did see it.

Q Now, Captain, let's stop playing tennis. Just what did you see?

A I didn't sit there and look to see whether his green light was going to show or not. The first thing I realized was "Here he is coming at me at an angle" and it's too late to register on your mind what you are seeing right then. You are just in the act of hitting it.

Q Well, my question was: isn't it a fact that if the QUEMADO LAKE ever was in Position 1-A that you would have seen her green light?

A I will admit that I could have seen it.

Q You would have seen it if it was in Position 1-A?

MR. LEMLE:

The witness testified that he could have seen it but wasn't looking at it. It is the difference between would and could. I submit the witness has answered the question.

Q Captain, have you ever had your tow and towboat take suction from a passing loaded ocean-going vessel?

A I have had loaded ocean-going vessels partially break up my tow from their swells.

Q But have you ever had the experience of being sucked in by the passing vessel's suction?

A I don't recall ever having that happen, no, sir.

Q Did you have a hard right rudder on when the QUEMADO LAKE was in the act of passing your tow?

A Not to my knowledge I didn't have. I was on a straight rudder.

Q Well, before that time when you did put on a hard right rudder, where was the QUEMADO LAKE at that time?

A He was -- shall I show you on the map? (Pointing to photograph) He was still up in this locale here, sir.

Q Did you show him your red light when you put on a hard right rudder?

MR. LEMLE:

I want to interrupt. "This locale" won't show on the record. Will you take a red crayon and circle the locale that you referred to?

THE WITNESS:

At the time I gave a hard right rudder?

MR. LEMLE:

That is correct. Mark that "location of" or "approximate location of QUEMADO LAKE when NEW ORLEANS on hard right rudder." Just mark it with a letter "R".

(The witness complied.)

(Whereupon, the reporter read back the pending question: "Q. Did you show him your red light when you put on a hard right rudder?")

A My answer is that I don't know if he saw it or not.

Q Did your tow swing under hard right?

A Probably not sufficient for him to see the red light.

Q Well, you had agreed with him to pass port-to-port, hadn't you, sir?

A Yes, but that doesn't mean I swang sufficient for him to see the red light.

Q You can't pass port-to-port without showing red to red, can you?

A Yes, when he is down far enough to see it. Follow me? Maybe he could see it right then. I can't say whether he saw it or didn't see it. I don't know.

Q Don't you think that is important, Captain, to clarify an agreement on a port-to-port passage?

A Off the record, could I show you something.

Q Explain it on the record. Explain it any way you wish.

A Suppose I had a tow formation like this and you asked me-- well, that won't do. We are speaking of this tow formation, so there is no need of showing you anything. But it is not unusual to have a tow formation where the red light

would be way back here and he wouldn't see it until he was around in line with me. Follow me?

Q Are you assuming that they had exchanged passing signals?

A Definitely exchanged passing signals.

Q And you only exchange passing signals when each is in sight of the other?

A You exchange passing signals many times and don't see both the red and green lights.

Q You do?

A Yes, sir, definitely so.

Q You had better check your rules on that.

A Why?

Q Well, let's don't get into that.

(Discussion off the record.)

Q When you gave the full right rudder, did you increase your speed?

A No, sir.

Q Your engine speed?

A No, sir, no, sir.

Q Did you ever turn over more than 2800 R.P.M.'s during that maneuver?

A We never did turn any more R.P.M.'s than the normal operation of the engines were operating at, which I assume was approximately 2800 horsepower. May I off the record make a statement about that? In or off, as you wish. Mr. Lemle is going to make objections. We can't increase the speed of the engines that quickly. When we are operating with pilot house control we have a certain amount of power that we can

get, and that is all we can get. If we want any more power, we have got to get the engineer on the telephone and get him to give it. The engineer himself gives it to us. We can't do it ourselves.

Q Now, Captain, do I understand your testimony then to be that at the time the collision happened you had not yet begun to make your turn to starboard to run under the point or near the point?

A No, sir, I had not begun to go around the point, no, sir.

Q Why not?

A Because I hadn't reached -- I hadn't gotten far enough up the river to go around the point, in my opinion.

Q Do you have a ship-to-ship radio-telephone?

A Yes, we do.

Q What wave length frequency do you remain on?

A I should know the frequency, but I don't,but it's Channel 4.

Q And do you exchange information with others about the whereabouts of ocean-going traffic?

A Ocean-going?

Q Yes, sir.

A We do not, because no ocean-going traffic has Channel 4, to my knowledge.

Q I mean with other towboats on Channel 4 about the whereabouts of ocean-going traffic that you might met.

A Certainly we do, and we keep Channel 4 on continuously all the time, and it's a regular practice, much as we dislike the noise that we get out of Channel 4 by sitting there

listening. We sit with it on all the time, and it's a regular practice in the last few years whenever one river craft meets or is passed by an ocean-going vessel, you immediately get on the air and tell them that the JOHN DOE passed up loaded, mile so and so, at such and such a time.

Q Now when you were back down near Riverton Light, did you know that the QUEMADO LAKE was around Sugar House Bend?

A I did not know it, no, sir.

Q Had you ever had any message on your ship-to-ship radio-telephone abou the whereabouts of this downbound tanker?

A No, sir, I did not.

Q Do you ordinarily pass loaded tankers downbound while in the bend?

A What else are you going to do? He is coming so fast you can't do anything else. You don't know anything about him until he is right there at you.

Q You were a mile away when you first saw him?

A Yes, sir.

Q Other than the top lights, what side lights or lights on the QUEMADO LAKE did you first see?

A Well, I wasn't too interested in seeing his red and green lights because what we look for is white lights because that is the first thing we can see and immediately know that is a ship then.

Q After seeing the white lights, what is the first side light or lights that you saw?

A Should have been the green light.

Q What was it though, Captain?

A There you are again. I am not going to say I stared at the green light. I am not sure whether I did or didn't.

Q Well, now, let me refresh your memory again. I don't mean to trip you up, but you told the Coast Guard that you saw his red light when you first saw him. Take a look at the diagram and see. When you are in Position 1 and he is in Position 1, you are in positions -- in the positions at which you first saw him.

A Am I confused? Isn't the green light on the right, the starboard?

Q Yes, sir.

A Why would I have told the Coast Guard I seen the red light. Oh, his red light. Wait a minute. Sure. His green light is on his starboard. Sure I would have seen his red light.

Q Well, does that refresh your recollection that you did see his red light?

A If I stated in my Coast Guard statement that I saw his red light, I will agree that I have seen his red light. I don't remember whether I did or didn't.

Q Well, what were you looking at when you blew the one blast?

A Two white lights up there (pointing up.)

Q And you understand the rules to permit that?

A Permit which, sir?

Q To sound a passing signal without seeing either or both of the side lights?

A It is not unusual to pass a tow that doesn't have any

red and green light out there.

MR. FARRELL:

That is all.

RE-DIRECT EXAMINATION

BY MR. LEMLE:

Q Captain, tell me, did your vessel sustain any damage as a result of this collision?

A Considerable.

Q Had she had any damage prior? Did she have any pre-existing damage? Had she been damaged before this collision?

A Not recently.

Q I mean was there any unrepaired damage in the vessel prior?

A To the hull, you mean?

Q Yes.

A Prior to -- no, sir, no, sir.

Q Captain, on the question of lookout, will you state whether or not a lookout could physically have seen the approaching vessel, the QUEMADO LAKE, any sooner than you did?

MR. FARRELL:

Objection.

A Probably a second.

Q Was your position in the vessel above the water line? How high is that wheel house above the water line?

A About -- oh, 35 feet.

Q Now, Captain, looking at this diagram and noting your change of headings between Position 1 and Position 2, I ask you

whether or not at any time between those positions the NEW ORLEANS and her tow were at any greater heading or heading at any greater angle toward your port bank?

A To the best of my knowledge, never any more of an angle than the diagram shows.

Q Captain, did you ever use your searchlight before this collision?

A We never arrive at any point such as Brainger or Sugar House Point without flashing our searchlight across the river and usually across the point to warn any approaching vessel that is not visible of our location.

Q Will you state whether or not you did so on this occasion.

A I assume I did. I am not positive that I did.

Q Captain, did you write a report of this to your company?

A I don't know whether I wrote anything other than the accident form or not. I don't recall.

Q (Producing document) Captain, I show you a photostat of a form headed "Report of Accident Involving Damage to Boats, Barges or Property", headed "Mississippi Valley Barge Line Company" above that, and I ask you whether or not you wrote that.

MR. FARRELL:

I object unless this is for the purpose of refreshing his recollection. I haven't seen it yet. It seems to me it's self-serving.

MR. LEMLE:

It certainly is.

A Well, there is no question but what I wrote it. My signature is on the back of it.

Q Whose handwriting is it in?

A Mine.

Q When did you write it?

A I wrote it immediately following the accident.

MR. FARRELL:

May I see it? (Document handed to counsel.)

THE WITNESS:

See, here is my signature on the back.

Q State whether or not that is the official report that you made to your company of this accident.

A It is.

Q Will you tell us, on referring to that report, where you told your company the head of the tow was at the time of the collision.

MR. FARRELL:

I object to that. I think it is self-serving and--

A The report says the head of the tow was one quarter of a mile below Rateau Light.

MR. LEMLE:

I offer the report in evidence for the restricted purpose of showing that the witness stated in his own official report to his company, as he is stating today, that the head of the tow was a quarter of a mile below Rateau Light, which has been brought into question today on cross-examination.

MR. FARRELL:

Well, after examining the report, I withdraw my objection

to it and let it go in in its entirety, because I want to ask the witness a question about it.

MR. LEMLE:

I offer it unreservedly and without restriction and ask that it be marked "Clay 4".

(Whereupon, the document identified by the witness was marked for identification "Clay 4".)

RECROSS EXAMINATION

BY MR. FARRELL:

Q Captain, are your other estimates on the report more accurate than what you have drawn and reconstructed for us here today?

A Are they more accurate, you say?

Q Yes.

A I would say they are not any more accurate.

Q Well, I call your attention to--

A May I say this: I haven't read the report now. It was handed to me. I didn't read it.

Q I thought you had finished reading it. Take it back (Handing document to witness).

A I only looked to see that my signature was on it. If you are referring to the damage, why, that was the only damage that was visible above the water line.

Q I am not referring to that, sir. I call your attention to your statement on the report that the NEW ORLEANS was 200 yards from the west bank of the river. You see that?

A Yes, sir

Q Now were you referring only to the towboat itself or to the tow?

A I was referring to the towboat and tow.

Q The towboat and tow. You weren't lying on an angle in the river at the time that this collision happened?

A My drawing shows I was lying to an angle to some extent, but not much. I want you to know that was written at least the next day and I never saw a pair of dividers and one of those maps until I walked into Mr. Lemle's office. It was laid on the map to determine how accurate my estimate was.

Q What is the river's width at the place where you said you lay 200 yards off the right descending bank? Would you check that on the chart, if you wish?

A Aren't you better with these calipers than I am?

MR. LEMLE:

(Measuring) It's 1800 feet. You check me. From here to here, 1800 feet.

A The water width is 1800 feet.

Q 1800 feet or 600 yards?

A 600 yards.

Q So the NEW ORLEANS was across the center line at this time. Is that so?

A That is right.

Q Now you mentioned that your run between Riverton Light and Rateau Light was taken with the knowledge that the bend itself was where downbound traffic would run. Do you recall that?

A Yes, sir.

Q That is as I have it here in my rough notes. So you would normally be out of the channel of downbound vessels?

A That is right.

Q Isn't it a fact that the ascending vessel gives the bend to the descending vessel?

A Meeting ships, yes, sir.

Q Why didn't you remain on right rudder when you first began to give way upon seeing the QUEMADO LAKE and blowing the one blast?

A You mean when I started steering right rudder why didn't I continue to do so? Well, I would have gotten in the way of the ship if I had continued to do that.

Q I don't quite understand that answer.

A That if I would have continued on a hard right rudder that would have put my boat around in the way of the ship if I had allowed her to continue that way.

Q Well, you were making an advance through the water of almost four miles, weren't you?

A That is what we estimated.

Q Were you able at this time to have pulled across the center line and into the side of the river adjacent to the left descending bank?

A I don't think so, not in that length of time.

Q Well, didn't you say that about two or three minutes went by from the time you first saw the QUEMADO LAKE until the collision?

A About two minutes passed.

Q About two minutes?

A Yes.

Q Well, at that rate of advance of almost four miles, couldn't you have gotten over in to the point side of the river, Captain?

A My sailing line shows he had 600 feet. How much more room does he need?

Q Well, that is not my question. I simply asked you in those two minutes couldn't you have gotten in to the left descending half of the river.

A It is my answer that it isn't necessary and it isn't practical to give him any more room there than I was giving him.

MR. FARRELL:

That is all.

MR. LEMLE:

I think that is all, except that at this time, based upon the testimony of the witness, I offer in evidence the log sheet, and ask that it be marked for identification "Clay 5".

(Whereupon, the document referred to by counsel was marked for identification "Clay 5".)

...Thereupon, at 4:00 o'clock p.m., the taking of the witness' testimony was concluded..

CERTIFICATE OF STENOGRAPHER

I, Helen R. Dietrich, certify that the above and foregoing, is, to the best of my knowledge, information and belief, a true and correct transcription of the testimony of ROY J. CLAY, taken on behalf of Libellant, in the offices of Lemle & Kelleher, 1836 National Bank of Commerce Building, New Orleans, Louisiana, beginning at 1:30 o'clock p.m., Tuesday, September 29, 1953, to be used in the Matter of MISSISSIPPI VALLEY BARGE LINE CO., LIBELLANT, VS. S.S. QUEMADO LAKE, HER ENGINES, TACKLE, APPAREL AND FURNITURE, ETC., No. 2229 In Admiralty, now pending in the United States District Court, Eastern District of Louisiana, New Orleans Division.

s/ Helen R.Dietrich
Reporter

...ooOoo...

TESTIMONY OF BERNARD L. ZUMWALT

(Number and title omitted) (Filed: October 19, 1955)

APPEARANCES:

For the Libellant: LEMLE & KELLEHER,
National Bank of Commerce Bldg.,
New Orleans, Louisiana

By: SELIM B. LEMLE, Proctor

For the Respondent: TERRIBERRY, YOUNG, RAULT & CARROLL
Whitney Building
New Orleans, Louisiana

By: ALFRED M. FARRELL, JR., Proctor

S T I P U L A T I O N

It is stipulated and agreed by and between the parties that the testimony of the witnesses may be taken down in shorthand (Stenotype) by Helen R. Dietrich and by her transcribed, the formalities of signing, sealing, certification and filing being waived, all objections, save objections to the form of a question, being reserved to the trial of the cause.

It is further stipulated that opposing counsel shall be furnished with a carbon copy of the transcript without cost to him, the cost of taking the testimony and transcribing same to be a taxable disbursement.

It is further stipulated that the witnesses may be sworn by Helen R. Dietrich, Notary Public in and for the Parish of Orleans, State of Louisiana.

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BERNARD L. ZUMWALT: a witness called by and on behalf of Libellant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEMLE:

Q Mr. Zumwalt, will you tell us your residence and your present occupation?

A Yes, sir. Residence: 6039 Horton Place, St. Louis, Missouri.

Q Your present occupation?

A Present occupation is machinist, St. Louis, Mo.

Q Have you ever done any boating or gone to sea?

A Yes, sir, I have had my marine license since 1945. I was

on the river with Mississippi Valley Barge from March 1949 until last September.

Q Tell us your age.

A Thirty-one.

Q And what marine license do you have?

A I have chief, Diesel, marine license, 3500 H.P.

Q And what marine service have you seen?

A Actually marine service, I started in 1942, received my license in 1945. Excepting a year ashore in 1948 I was in the marine service up to last September, 1950.

Q Have any deep sea service?

A Yes, sir. My deep sea service time was 1942 through--the last trip in 1947.

Q With whom?

A With the U.S. Army, Corps of Engineers, Army Transportation Corps, and Lykes Bros. Steamship Company and Waterman Company out of Mobile.

Q Then you went with Valley when?

A In 1949, March of 1949.

Q When you left Valley, what did you do?

A I went to work at the Nordberg Company in St. Louis as a journeyman machinist.

Q Did you ever serve aboard the Motor Vessel NEW ORLEANS owned by Valley?

A Yes, sir. Offhand I don't have the exact dates. I was on several different vessels with the Mississippi Valley Barge Line, and on this particular vessel, the NEW ORLEANS, offhand I'd say about six or eight months was my service time on her

as engineer.

Q Which engineer..

A Both. I was assistant and chief engineer. I relieved the regular chief engineer while he was on his vacation time.

Q And were you on the NEW ORLEANS on the trip in which she had the collision with the QUEMADO LAKE?

A Yes, sir, I was on the NEW ORLEANS and on watch as chief engineer.

Q Do you remember the date?

A No, sir, I don't.

Q Remember what time of day it was?

A It was in the evening but the exact time I don't remember.

Q What time did you come on watch?

A At 6:00 P.M.

Q It was on your watch?

A Yes, sir.

Q Tell us about the NEW ORLEANS. What kind of engines does she have and how many of them?

A She has two 16-cylinder V-type General Motors engines. They are separat in each drive and separate screw reduction gear.

Q Diesel engine?

A Yes, sir.

Q Do you recall the ratio of the reduction gear?

A The ratio of the reduction gear to the wheel is three and a half to one.

Q Do you recall the size of the wheels?

A The wheels are 96 inch diameter and 90 inch pitch.

Q And how do they revolve or turn?

A Inboard.

Q I believe you said each engine is geared to a separate wheel?

A Yes, sir, separate engine reduction gear and separate screws.

Q Is the NEW ORLEANS engine room controlled or pilot house controlled?

A Pilot house controlled.

Q And how do those controls work, just roughly?

A They are air-controlled from the pilot house to the engine governor, and then the governor actually operates the fuel and operates the engines. Each control in the wheel house, if you are interested, is a separate control for each engine and they control the speed of the engine and the stopping and the full speed of each direction, that is, going ahead and they come back to a central stop position and then they can reverse each engine, each control. It's on a stand, one stand, but they are separate controls for each engine and each screw. (Demonstrating with hands)

Q You motioned with your hand as you described it. As you shove the lever forward, what happenes?

A The lever in the wheel house, as you push it forward, standing in the forward position of the vessel, as you push it forward, the engine and the screw-- I will correct myself there-- the engine keeps right on time but the screw is going in ahead position, and as you bring it back to an upright

position the screw stops and then as you bring it back to you the vessel reverses the screw in the reverse position.

Q And the speed is regulated how?

A With that same lever. It is marked on this control. The position farthest away from you is full position ahead. As you come back to the center point your speed is decreased--it decreases to a stop right in the center-- and as you start in the reverse position the wheel engages with the engine and the power starts at a slow speed, idle speed, and as you gradually bring it back the speed comes up to full speed.

Q That is full speed astern?

A Full speed astern same as speed ahead.

Q You say the engine runs all the time?

A Yes, sir, this particular engine has a clutch arrangement just ahead of the reduction gear and the clutch actually reverses the reduction gear. The engine keeps running one position all the time.

Q What about the engine speed?

A The speed is varied with this control in the pilot house that I just mentioned.

Q Now does the engineer in the engine room have to do anything at all to change the speed or direction of the engine?

A Not for normal conditions. The only one change that the engineer can make is emergency -- he can change the governor and the control where it can be increased to an overload speed, not a normal running speed, but overload speed for that engine, and it can't be used all the time or for long periods of time.

Q What is the normal maximum running speed of those engines?

A Each engine has a normal running speed of 750 RPM'S.

Q Which gives you what speed on the wheels?

A Three and a half to one. That would give you around two hundred to 215 RPM's on the wheels.

Q Now this overload you are talking about, what is it possible to increase?

A The average increase there for overload is approximately 40 RPM's on the engine which with a gear ratio of 3½ to 1 would make it around 11 RPM's on the screws themselves for each engine.

Q Now in order to give this overload capacity, what is it necessary for the engineer to do?

A At the governor where the controls come in from the wheel house, there is a locked cap screw which actually is a limit on the governor arm, and to explain it fully it's just a short cap screw with a lock nut on it which is tightened with a wrench to hold the governor from vibration loosening up or anything, so in order to change the speed to get this overload you must have a wrench or any tool adaptable to that purpose to loosen this lock and back out this cap screw which is a stop.

Q And there is one of those on each engine?

A Yes, sir, on each engine.

Q How far apart are these engines in the engine room?

A Offhand, the engines are around 15 foot apart. They are set out towards the outboard part of the vessel. It just has a

passageway between the outer engine room bulkhead and the engines, so my guess would be around 15, 16 feet from the controls, governors, that we are talking about right here.

Q In order to give this overload you would have to give it to each engine separately?

A Separately, yes, sir.

Q What is the horsepower of each of those engines operating at 750 revolutions?

A The factory-rated horsepower for these engines is 1700.

Q Now, Chief, on this particular night of the QUEMADO LAKE collision prior to the collision where were you?

A I was on the main deck of the vessel on the port side at the engine room door.

Q Can you tell us how long you had been there before the collision?

A Not exactly. I made regular rounds and offhand I don't know whether I had been there five, ten, fifteen minutes or just how long.

Q Who else was on the engine room watch with you?

A I don't know his name, but I had a striker on watch with me and an oiler.

Q And where were they?

A The striker was with me, within ten foot of me, and the oiler was doing work in the lower engine room, clean-up work, which is his duty.

Q The striker was ten feet from you, in or out of the engine room?

A As well as I remember, the striker was in the engine room, just inside the door, and I was out.

Q Will you tell us what, if anything, you know about this collision, what you saw or heard.

A I saw the two white lights of the tanker well ahead of our vessel, and when I first saw them I took another look to make sure it wasn't any mistake, and they were coming at such an angle that I couldn't see any way of avoiding a collision, and at that time I went into the engine room and told my striker that there was a collision ahead or something to that effect and got the attention of my oiler, which was right down on the next deck where he could see me, and I motioned to him to get out of the engine room, lower engine room, to a safer position, which he did, and the striker and myself both stayed in the engine room close to the throttles of the main engines, control throttle.

Q Did you get any signal of any kind from the bridge?

A I didn't, but I couldn't, I was too close to the engine noise. In fact, I couldn't say that I never heard a signal from the whistle when I was in that locality of the engine room -- too much noise.

Q You misunderstand me, Chief. I am talking about after you got to the throttles, did you get any signal from the bridge to alter speed of engines?

A No, sir, I didn't get any signal from the pilot house in regard to emergency or change of speed or anything to that effect.

Q Now coming back to the testimony, the answer you just gave, do I understand from that that you did not hear any whistle signals?

A I did not.

Q From your vessel or the other vessel?

A From either.

Q Chief, when you first saw the white lights, these two white lights, what white lights were those you saw on this approaching vessel?

A Well, with my experience since I have gone to sea, I knew what they were by the height and the kind of light they were. They weren't colored lights which they use for running lights or anything. They were strictly the white lights on top of the mast, and from the height--my position--I could tell that they were on a ship -- they weren't on a bank or something.

Q And how were they lined up?

A They were lined at an angle towards -- how best to say it? -- but they were in a line towards the tow and the vessel instead of being a parallel line like they ordinarily would have been in passing.

Q And how far was the ship from your vessel when you first saw these lights?

A You mean out from the tow or end of the tow or what?

Q Well, in distance from where you were standing.

A My estimated position of the ship was about at the head of the tow, which I think at that time we had five or six

barges long, so the average barge, Oh 200 or a little less-- it was probably 900 foot, possibly from 900 to 1000 feet from where I was standing.

Q And headed how with relation to you?

A Pointed at an angle to the vessel, the bow of the ship coming in at an angle to our tow and vessel.

Q And how long after you saw this ship did the collision occur?

A Well, I come from the port side of the vessel over to the engine room, and, as I explained before, motioned to my crew to a safer position -- approximately 2 minutes, 3 minutes.

Q Now tell me, Chief: from where you were standing by the engine room door, could you see the bank on your left hand side?

A No, sir, I couldn't see the bank from the port side where I was standing.

Q Have you ever stood in that position on previous occasions?

A A number of times, I would say, hundreds.

Q Will you express any estimate as to how far you could see the bank on, with weather conditions such as prevailed that night, which were what, by the way?

A That night was a clear night, no rain, no fog, and from my experience on the river and looking as you say from similar positions on the boat and the bank, I would say that I could see the bank if it had been as close as 350 to 400 foot. I

have no way of knowing how much farther it was than that, but I didn't see the bank.

Q) Chief, does the steering gear come under your supervision?

A Yes, sir, all maintenance and upkeep.

Q And, of course, the engine room comes under your supervision?

A Yes, all mechanical equipment aboard the vessel.

Q What have you to say as to the manner in which all machinery, steering engines, etc. were functioning on that night?

A As the log book will prove, all the machinery was working in normal good positions, engines, steering gear, and all other machinery in regard to the operation of the vessel.

Q What kind of a whistle does the NEW ORLEANS have?

A The NEW ORLEANS has a regular marine air whistle.

Q Have you any estimate as to how far it can be heard from the vessel by an approaching vessel?

A Well, really truthfully I can't estimate that. I know it's a very loud whistle when you are on the forward deck or even out on the tow, which I have been on occasions and heard it blow, but exactly the distance away -- I know it would be a great distance, but I can't guess how far.

Q How was it functioning on that night?

A Well, I didn't hear it immediately before the accident, but I heard it before I went on watch at 6 P.M., because from my room aboard I could hear it and usually I come around to

the head of the vessel a number of times off watch and it was working at that time. The procedure on that, if there is anything on that I would have been the first notified, and I wasn't notified that it wasn't in good working condition.

MR. LEMLE:

I tender the witness.

CROSS EXAMINATION

BY MR. FARRELL:

Q Chief, although the indicated horsepower is 3400, what is the actual horsepower utilized when running at full speed under those conditions of load?

A Well, all I have to go on there is the factory recommendations as to RPM'S, and I would say that it was utilizing the 1700 horsepower at that time.

Q You were on full speed?

A Full speed, full normal speed.

Q And you were utilizing about 50 percent of your indicated horsepower? Did you mean to say the total horsepower was 1700?

A No, sir, 1700 horsepower for each engine, which would make a total of both engines of 3400. Right?

Q Yes. You mean to say you were utilizing the full horsepower at this time under normal cruising conditions?

A The full normal horsepower, yes.

Q The reason I asked you that is because Captain Clay was in a while ago and testified that the horsepower ordinarily used is between 2800 and 3200. Do you disagree with that?

A Well, slightly. I am going by the rated horsepower of the engines alone, and, if there had been any changes, different wheels or any resistance made to the boat which would decrease that, I don't know about it.

Q He also said that the indicated horsepower is approximately 3600. I think your testimony was 3400.

A Thirty-four hundred, right.

Q Well, do you know which is correct?

A Well, according to all the data that I have seen on the engines and talking with the port engineer, that is where I arrived at the 1700 horsepower per engine.

Q What does your inspection papers state to be the indicated horsepower, 3400 or 3600?

A Well, I wasn't on the NEW ORLEANS at inspection time; to be truthful about it, I have never seen the inspection papers, so what they are, I don't know.

Q The only reason I am asking you this is because I got the clear impression from Captain Clay's testimony that there was always a substantial reserve horsepower, which in this case wasn't used. He said normally the horsepower actually developed on full ahead is between 2800 and 3200, although the indicated is 3600, and I am trying to clarify that with you and ask you whether you agree or disagree with that.

A The only reserve horsepower we have, as I have stated before here, was the overload horsepower which the engine isn't supposed to use except in emergency, and it's very little actually on the screw, about 11 RPM's.

Q If that overload was developed in an emergency, what horsepower do you think you would get up?

A Well, it would have to be figured up.

Q Your increase in the engines would be 40 RPM's you estimated?

A Approximately 40 RPM'S on the engine itself.

Q Now would that, in your opinion, develop more than 3200 horsepower?

A It would develop more than 3400 horsepower. We operate on 1700 horsepower normally.

Q Assuming your indicated horsepower is 3400?

A Yes.

Q Then your overload would develop more than that?

A More than that.

Q And you are testifying now that at this time you were operating under full indicated horsepower of 1700 on each engine or a total of 3400. Is that your testimony, sir?

A I testified that they were turning at 750 RPM's. Figured out according to the facts and figures, it is actually right at 1700 horsepower, -- all of the information that I have been able to absorb on and before this date.

Q Do I understand it to be that the pilot house is unable to increase from normal full speed and develop more horsepower without the engineer lossening the cap screw at the governor?

A Yes, sir, that is right. They have the controls up through the normal speed and horsepower of the vessel, and any overload that is put on the engine must be done in the

engine room by someone at the --

Q Well, I am not necessarily talking about an overload. I am talking about under normal full speed conditions which you were steaming under.

A Yes, sir.

Q Under those conditions, what is the position of the levers in the pilot house?

A The levers in the pilot house at full speed position is all the way over on the controls in the ahead position. In other words --

Q And that would have been the position at this time?

A I assume that they were running all the way over position. It was the normal procedure, and if when they cut them down -- it's usually cut -- oh, approximately 50 RPM's would be their first speed drop, and I would have --

Q Is that made by --

MR. LEMLE:

Let him finish.

A -- and I would have noticed that change if they hadn't been running in the full position. Say at that moment if the had slowed down or anything, I was right there by the engine; I could have told this drop in speed.

Q Well, explain the positions of the pilot house levers, how many there are on it -- on the --

A -- control stand?

Q -- on the controls in the pilot house.

A They have a control stand built up where the pilot or captain is facing out ahead of the vessel and these controls

are directly in front of him and they are up waist high or a similar level and there are two upright levers, very substantially made, and they are mounted. Each lever is for a separate engine. The port lever is for the port engine and the starboard lever is for the starboard engine, and on the mounting itself, it's in a -- oh, a quadrant, I guess you'd call it, half moon, and in the center position on the peak of this quadrant is a stop position for both engines, and as you push them forward from that stop position your wheel starts turning and there is a graduator marked on the control -- the farther you push them, the engine speed increases with each position until you have it pushed all the way to the stop. They have a stop on it.

Q Well, are there intermediate markings between stop and the farthest position ahead that the lever can be put to?

A Not --

Q Such as a half speed or three quarter speed? That is my question.

A Not actually a set position like you are talking about, other than these levers. They are around 14 inches, approximately 14 inches long, and from the position of them even in the dark you get the feel of them, you can tell whether they are approximately half position or full position. There is actually no--

Q So there is no intermediate position on the telegraph, on the control box, such as there is on a seagoing vessel that you have seen, which position is marked "Half ahead" and "Full

ahead"? There is not that type of intermediate marking position, I take it?

A The markings are there, but actually it has no clicked position like you are talking about, a sturdy, set position. If you were looking at them, you could move them to thei marking, and they are sturdy, substantial -- they will stay in that position.

Q You have been in the pilot house?

A Oh, yes.

Q Offwatch, and watched the pilot or captain handle the controls on a number of occasions?

A Yes, sir, I have.

Q Well, under normal cruising conditions such as apparently were in order at the time, is it the captain or the pilot's custom to place both levers in the farthest position ahead to the maximum?

A Yes, that is the usual procedure for them to put them in the maximum speed and control they have there and leave them there until --

Q Well, now, is there any way for him to increase speed when the levers are in those respective positions?

A No, sir.

Q At the maximum, other than the engineer having to unloosen the cap screw at the governor?

A That is the only means he has. He has no means in the wheel house of getting an overload speed except using the telegraph to signal the engine room to do such.

Q Oh, then I am afraid I don't understand Captain Clay's testimony, and perhaps you can enlighten us on it, when he said that ordinarily the vessel steams at 2800 to 3200 horsepower rather than at its maximum.

A The only way I could enlighten you on that: Captai . Clay has been with the company a number of years and on a number of vessels, and most of these vessels, including the NEW ORLEANS, and numerous other vessels of the Valley have been changed or the controls have been changed or the engines have been changed; and I honestly think that he had some other vessel in mind rather than the NEW ORLEANS when he made that statement.

Q Well, what signal would the engineers receive for emergency full ahead from the pilot house?

A We have a telephone, marine telephone, with a loud gong on it that they can use or we have a regular ship's telegraph which in fact originally came off the Navy vessel and the signal is set on not only that boat but the other Valley boats I know and probably numerous other companies on the river, as a continuous ringing of the telegraph which besides the sound has a needle that sweeps as they swing.

Q Now when you and the striker went to the controls after you saw the lights of the approaching QUEMADO LAKE, did you do that in anticipation of receiving that signal from the pilot house?

A I went in the engine room close to the controls for two reasons, one mainly was to be close to the controls in case I got any signals.

Q Did you expect to get it?

A I wouldn't say I expected. It's my job to be handy when I think something unusual is going on. And the second reason was to get my crew in a safer position in case of a collision, which is also my job.

Q Now when you saw the mast lights of the QUEMADO LANE off the forward barge in your tow, about a thousand feet away, did you see either the red or green side lights or both at that time?

A I didn't see either. If my memory is correct, there was possibly an empty barge right at the head of our vessel which might have had the running lights blocked off. I don't think so. For some reason or other I don't remember seeing red or green running lights.

Q Your tow was loaded?

A Most of it was loaded. You would have to check on that. I don't know how many empties or how many loads. We had various tows.

Q Well, I asked that because I didn't know that anything obstructed your view when you stood out on deck outside the engine room port door.

A Well, not directly out the port side but looking forward. See, we have these tows made up in several barges wide. Well, the tow itself was wider than the boat, wider than the boat itself, and by the running lights' normal position being in lower position than these mast lights, it would just be a guess on my part that they might have been obstructed by part

of the boat itself or an empty barge.

Q Well, the bridge of the approaching tanker was much higher than the deckline of your tow, was it not, Chief?

A Yes, oh, yes, it was, although it was a loaded tanker. I call it loaded. I don't know approximately. When it came alongside and hit the hull, I saw it was pretty high.

Q Now that you reflect back, there was no obstruction of your view from the port door of the engine room up to the bridge of the approaching tanker at the time you saw these white lights, was there?

A Well, I guess there couldn't be with the height of that vessel, but I didn't see the running lights of the tanker.

Q Were you able to tell if the NEW ORLEANS was on a right wheel at the time when you saw the tanker?

A I have no way of knowing that. The only thing that I can tell - when they move the rudders either way it makes a slight difference in the sound of the engines. The reason is that it puts just a little more load on them whenever that rudder is moved over where it obstructs the water. So I have no indicator to know which way they was turned or no way of knowing whether the rudders were --

Q Well, judging by the movement of the tow through the water, were you able to tell if the tow was swinging to the right or not?

A If I had of been in a position close enough to the bank where I could have judged from the bank or watched the water long enough, I probably could have, but I didn't. I had other things to do, and, like I said, I saw the lights and in my

opinion it would be a collision, and that is when I moved out of the vision of everything but the engine room.

Q Now, Chief, getting back to your estimate of the visibility to the bank, as I understood your testimony, you said that ordinarily you could see the left bank at a distance of 350 to 400 feet under those conditions of visibility. Is that right?

A That is the statement I made, yes, sir.

Q But you say that at this time when you were standing outside of the door you didn't see the bank at all?

A I did not.

Q Could you see the head of your tow?

A No.

Q Why not?

A Too far away from me, I guess.

Q Well, isn't the fact of the matter that you weren't paying any attention to whether or not the bank was near or far and had no occasion to look for the bank or at the bank? Isn't that so, Mr. Zumwalt?

A I would say I had occasion to look at the bank. Any time there is danger of collision you might have to put a life jacket on and get to the bank, so unconsciously that was one of the first things I looked at.

Q You don't mean to tell us that the night visibility on the Mississippi River is 350 to 400 feet on a clear night like you had that night, do you?

A I say that you can see the outline of a bank and timber

or whatever happens to be there. I say you could see the difference there.

Q Do you remember if this was a moonlight night?

A All I remember is that it was fair weather.

Q And if you went up in the pilot house you would have been able to see the head of your tow a thousand feet ahead, would you not have, under those conditions of visibility?

A I think I would have been able to. You have quite a height difference there. I don't say that you could see everything out -- the head of the tow -- but you would have been able to make out an outline of the difference between the tow and the water, but I was down, actually a matter of three foot, from the water line where I was standing on the main deck. It depends on our fuel capacity, whether we was loaded with fuel. I could have been a foot off the water line. We loaded in New Orleans. I would have to check the log book to be sure. We always did load to capacity here in New Orleans, and we weren't very far up the river, so we were pretty heavy down in the water.

Q And the bank on the left side is a low-lying bank?

A It's a bank with timber on it. That's all I know. Some kind of timber, willows or something.

Q When had you last seen the left bank?

A I saw the bank after the collision. They had to go to the bank and arrange the tow and put the motor boat over and went to the bank to go ashore to telephone. We were unable to contact the office by ship 'phone.

Q How soon after the collision did you see the left bank?

A Well, it was a little while because we investigated the damage, and before I went ashore I got the other engineer up that was aboard to take over the watch, and there was considerable time elapsed before I went ashore, possibly three quarters of an hour or an hour.

Q What part of the NEW ORLEANS was in collision with the tanker?

A Back on the port side, on the stern from -- it was just aft of the engine room where they hit the first time and then it just scraped and hit all along the stern, the last 20 or 30 foot.

Q Did your port stern scrape along the port side of the tanker after the first impact.

A Well, it was more like two impacts. Seemed to have one solid blow and then evidently by the scars it was scraping all the time, but then it must have broke loose an inch or two and hit again somewhere along the stern, because I definitely felt two impacts.

Q You are talking about along the stern of the tanker or along--

A Along the stern of our boat.

Q Well, in answer to my question, could you tell if the port stern of your boat contacted the port side of the tanker a number of times as the port side of the tanker went by?

A As the tanker was heading, I was looking right through from my position in the engine room through the door. Of course, there is an overhang there about nine foot above the

deck. I couldn't see above it, but the first part of the vessel I saw, on the tanker I am talking about -- it still had a curve in the hull up to the -- in other words, it was curving out, which had to be part of the bow, not plumb up to the bow but back no further than that curve starts going out -- what?-- 30 or 40 foot or maybe 50 foot.

Q Abaft the immediate stem of the tanker?

A Right.

Q Was that the point of initial contact as you saw it?

A That is the first contact I saw.

Q And with what part of the NEW ORLEANS?

A That was right along -- just aft of the -- I saw that curve in the vessel before I felt the first impact.

Q The stem of the vessel had gone by, that is, the immediate stem?

A Yes. I didn't see the stem. All I saw was a curved hull, which I took for granted was part of the bow back from the stem.

Q And what part of the NEW ORLEANS had the first contact? Was it your after port side at the corner or just where was it on your vessel at which the first blow occurred?

A I have no way of knowing which was the first blow. As I say, I saw part of this tanker and felt a blow directly after it. Now it could have been that it hit the vessel or the first blow could have been one of the corner barges. It's all buttoned up, actually, one piece of steel, so, if it had hit out on the bow of the vessel, on the barges and tow, as far as my feeling the jolt I couldn't have told the difference.

Q Just to clarify the record, it didn't hit the barges. All the contact was between the two vessels themselves.

A Oh, it was? Well, evidently then it must have been the vessel that hit it first.

Q Well, did you feel a contact at the time the stern section of the tanker was going by your open engine room door?

A Well, I can't definitely say that I felt a contact at that particular time. It was all in a matter of a short time, and, like I have stated before, I could remember two distinctly different jolts, but other than that I can't clarify it any.

Q And after the stern of the tanker had gone by, did you look out of the engine room door then?

A Yes, I looked out the engine room door, but I looked back towards the stern of the vesel to see where it was and, well, it was more or less to see if it was going --

Q Were you looking for the bank then, Chief?

A No, sir. Too late to look for the bank.

Q Well, you had told us some of the reasons why you think you were looking for the bank before the collision, and I am wondering if those reasons still obtained after the collision when you again looked out of the same door. You are unable to tell us, I take it, whether you saw the bank just after the tanker went by.

Q No, I didn't see the bank.

Q Were you looking for it at that time?

A At that time I would say no, because there was too much activity at that time. I didn't have time.

Q Did the NEW ORLEANS tie off its tow at the bank?

A Yes, they immediately --

Q On what bank?

A On the port bank.

MR. FARRELL:

That is all.

REDIRECT EXAMINATION

BY MR. LEMLE:

Q Chief, you said that after the collision they investigated the damage. Did you yourself investigate the damage?

A Oh, yes, my first inspection was from outside and immediately I went back in the engine room, down in the lower engine room into the shaft alley where I could see about the damage with a flashlight and saw that the -- that there wasn't any danger of actually sinking. I mean there was a lot of damaged equipment down there but not actually enough that the vessel would be in danger as far as sinking or anything like that. And then my next step was -- we had ammonia refrigeration on there and I made an inspection of it to see there hadn't been any lines broken of this ammonia to let it leak out, which would be harmful to the crew and to the supplies as well, and then, of course, I went from there and made a routine inspection of the shafts, bearings, and all of that to go along with it.

Q Chief, you say you inspected the shafts and such. Generally, without going into too much detail, what did you find with regard to the shafts and bearings?

A I found that some of the bearings were running hot. I immediately took steps to find out why by checking the bearings themselves, the foundations and so forth, which is regular procedure for checking such equipment.

Q What did you find?

A Found that they were running hot because they were jarred or pushed out of line with the shaft.

Q Had this condition existed prior to the collision?

A No, sir. As I stated before, we were running full speed and, as regular routine log inspections showed, these bearings were running normal.

Q Are you able to state without having your engine room log book in front of you whether or not on either that night or the next day or both the vessel had to lay to while you worked on these shafts or bearings?

A I don't remember whether the vessel laid to or completely stopped, but I did work on these bearings and equipment and it is possible that we continued in operation on one screw, which was permissible for short lengths of time while we made repairs on the other shaft engine or whatever it might have been.

Q Chief, you say that you felt two distinct bumps or shocks impacts, whatever you choose to call them. Are you able to say which one was the harder of the two?

A No. Actually I would say they were similar.

Q Chief, how long in time would it take to make available this overload power if you had gotten a signal for it?

A Possibly 30 to 40 seconds at the most, possibly sooner.

Q Per engine or per two engines?

A For both engines.

MR. LEMLE:

I believe that is all.

RECROSS EXAMINATION

BY MR. FARRELL:

Q Did you have your tool ready to unloosen the cap screw lock?

A Oh, yes, we kept tools handy there within 10 or 12 foot of the engine at all times.

Q So you were ready to give her anything she could develop in an emergency?

A At that time, yes.

Q Chief, I neglected to ask you this, and I don't know whether counsel has it with him.

MR. FARRELL:

Do you have the engineer's log book available here?

THE WITNESS:

I don't. Maybe--

Q Tell me this while we are looking for it: do you keep what is called a bell book, an engine movements book?

A No, sir, we are not required to.

MR. FARRELL:

As a matter of information, Mr. Lemle, may I see how the matter was logged down in the engine room by the chief, if at all?

MR. LEMLE:

You may if I have it.

THE WITNESS:

Log books are kept in Cincinnati.

Q Well, in the absence of your log book, are you able to tell by recollection substantially what you logged about this occurrence?

A I logged the approximate time within a minute, which is our regular policy, and the location of the damage, and also the results.

Q Would you have logged the RPM's on each engine at the time of the collision? Would that be recorded?

A I doubt it. It would have been logged though shortly before that.

Q At the change of watch?

A No. We have a two-hour logging, so it was logged at 6:00. Let me get this right.

Q Tachometer readings?

A All the readings: temperature, speed and conditions, anything. Even there is a space for poor conditions, something broken or if there is any reduced speed of the engine due to the fault of the engine it is logged, any defective equipment is logged.

...Thereupon, at 11:55 o'clock p.m., the taking of the witness' testimony was concluded...

TESTIMONY OF WILLIAM G. GLOVER

Monday, October 26, 1953

10:30 o'clock A.M.

WILLIAM G. GLOVER: a witness called by and on behalf of Libellant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JEMLE:

Q How old are you, Mr. Glover?

A Forty-two.

Q Where do you live?

A Memphis, Tennessee.

Q By whom are you now employed?

A Well, at the present time I am employed for myself. I own a truck. But I am going back with American Barge Line soon. This is my last trip on the truck.

Q Did you ever work on towboats?

A Yes, sir.

Q Over what period of time?

A Well, I started out there in 1936. Been out there off and on ever since, working a while, come off, do something else, and go back. Actually I had about five or six years experience regular.

Q Who is the last company you worked for before you quit?

A American Barge Lines.

Q Ever work for Mississippi Valley Barge Line?

A Yes, sir, I did.

Q How long?

A Worked for them about -- let's see now -- just a minute-- oh, about two and a half months I'd say just off handed.

Q Ever work on the NEW ORLEANS?

A Yes, sir, I did.

Q In what job?

A Deckhand.

Q Were you on the NEW ORLEANS when she had a collision--

A Yes, sir, I was.

Q --with the QUEMADO LAKE, with the tanker?

A Yes, sir, I was.

Q Remember when that was?

A I'd say some time the latter part of June. The date I don't recall. I got off the boat the 4th day of July, went on from there to Cairo and turned and come back to Memphis and I got off the 4th day of July -- I remember that well, but the date that hit I don't remember.

Q Do you know what time of day it was?

A Yes, sir, I do.

Q About what--

A Approximately I'd say around 8:00 o'clock.

Q What time did you come on watch?

A Six o'clock. Now that is not exactly, that is approximately around -- I know it was some time after I come on watch. It was dark. Might have been a little later even, but it was dark.

Q Well, will you tell us in your own language what you know about the collision, where you were and what you were doing.

A Well, sir, I was sitting on the boiler deck on the port side.

Q Stop there a minute. Tell us where the boiler deck is.

A That is the deck above the main deck.

Q The first deck above the water level is the main deck and then comes the boiler?

A Yes, sir. Sitting on the boiler deck, I heard the captain blow a passing signal. It is customary for the deckhand to look up and see what is passing. Never did hear an answer to that whistle, so I looked up, and I seen this ship coming down. He was going downstream; we were going up. So I looked around, seen the ship, looked like it was headed right into us. So I got up. Time I got up, shortly after-- I didn't make, no, you know, jump-up or anything-- the ship hit. So when she hit, why, it hit pretty hard, made a lot of racket. My first thought was the men that was sleeping down below. I started down to see and I seen everybody was up, and then I went on and started to get the tow back, you know, in shape.

Q You say you started to get the tow back in shape?

A Yes, sir. It broke one side out, what we call face-wise on there, broke the tow aloose from the boat.

Q Let's go back into a little more detail. Whereabouts were you on the port side of the boiler deck?

A Sitting on the corner along the hand rail up there on the boiler deck.

Q Sitting on what?

A We had a chair up there. Sitting on a chair.

Q And where was this ship when you first saw her?

A Well, I looked out and I seen it out to my left, how far I couldn't say exactly how far it was because, you know, a distance like that is pretty hard to judge. I wouldn't judge it, but it was out to my left heading downstream.

Q And headed how?

A Headed into an angle looked like and angling into the barges.

Q What were you looking at ? What I mean to say is: could you see the loom of the ship or shape of the ship or the lights? What were you looking at?

A I could see the bulk of the ship. What I mean, it never gets as dark there as on land. I didn't see any lights at all but I seen the bulk of the ship and it sticks up pretty high above the water. You know, it was up, the top of the ship, the top of the ship, the structure--I could see the structure of it, the bulk of it.

Q Could you see the bulk of the shore on your left hand side?

A No, sir, I couldn't see. We were too far off to see the shore from that side. We were pretty good ways offshore at that time. I couldn't see the shore at all.

Q How close do you think you have to get to the shore to see it on a night like that night?

A Well, I believe that you could see it 200 or 300 foot at that particular time. We had no fog, clear night, best I remember, very clear, we had no fog. I believe you could see

it 300 feet easy, just judging now. I know I never tested it -- I have no occasion to test it -- but you can see pretty well at night. It doesn't get as dark as it does on the streets, because you have the water kind of light.

Q Well, now, where did the tanker hit the NEW ORLEANS? Where was the first point of contact, do you know?

A Right back at the stern about the superstructure on this boiler deck, hit right along there, back about the stern end of the cabin, I'd say, best I could describe it to you, hit part of the cabin.

Q How would you describe the force of that lick?

A Well, it was pretty terrific, knocked me almost down. I caught the handrail and I got kind of straightened out and it was a pretty hard jar. Of course, I believe they got a harder jar on the stern than you would on the end -- hit the entire end of the tow -- it was a pretty hard jar though at that, pretty hard.

Q How many jars did you feel?

A About three I'd say. I got up, as I said, to go down and to get these men up. I remembered about, you know, ships sink pretty fast. You catch a man in bed and he doesn't have time to get out. That is why they have lost men in bed. My concern was more or less to get down and get the men out of bed. That was on my mind. But I'd say three jars and I believe I could be safe in saying that. When I got up to go after that jar, seemed it bounced in again and it was about three jars, I would say.

Q How many men were there on the deck watch with you?

A Four men and the mate, five men on watch.

Q That is, three deckhands besides yourself?

A Yes, sir, four deckhands and one mate, yes, sir.

Q Do you know where the other three deckhands and the mate were?

A They were in the galley. Had a guitar back there playing some music. See, when we are underweigh at night we don't have any duties other than run the lights, which is every two hours, that is the required time they run them. The men were back in the galley drinking some coffee and playing a guitar. They picked up a guitar back here at New Orleans and one of the boys is a pretty good guitar player and they were back there banging on the guitar, playing it.

MR. LEMLE:

I tender the witness.

CROSS EXAMINATION

BY MR. FARRELL:

Q Was the mate with the guitar player in the galley?

A Yes, sir, he was back there with the guitar.

Q What time was this, Mr.Glover?

A I am going to tell you: I don't know the exact time, I wouldn't say the exact time because out there we don't carry watches very often because we carry sulphur and sulphur will ruin a watch. Sulphur ruins the movements of a watch. Naturally, don't many deckhands carry watches, so I wouldn't say exactly what time, but around 8:00 or 9:00 o'clock, some

time like that. You know, you go on watch at 6:00 and you know time passes. You don't have any way of knowing time unless you get up and look at it.

Q At night?

A Yes, sir. I'd say around 8:00 or 9:00 o'clock, something like that, at night.

Q Getting back to the time you were sitting on the chair on the boiler deck, when you first saw the tanker, what lights of the tanker did you see?

A I didn't see any lights -- I will be honest about it-- just seen the bulk of the ship coming, just seen the ship itself. I didn't see any lights on the ship.

Q You don't mean to say there were no lights?

A Well, sir, if there were any on it, I didn't see them, and it was coming down -- it was almost blacked out. If there had been any lights, I'd have had to have been higher to see the lights. I was up on the boiler deck, which is pretty high, and I didn't see light one, not a light.

Q What is the next deck above the boiler deck?

A The next deck above the boiler deck on this particular boat now is the captain's quarters and -- let's see now on that boat -- yes, the captain I think is the only one with quarters on the next deck, which is a kind of a small deck.

Q That next deck on which the captain's quarters are located, is that the same level as the pilot house?

A No, he is still a little higher on this boat; he has quarters down and the engineer and some other quarters and then our quarters are down on the main deck.

Q What do you think the difference in the vertical line is between the deck on which you were sitting and the deck of the pilot house?

A You mean about how much higher?

Q Yes.

A Well, it's a good little ways higher on that boat. That is the biggest boat on the river. I guess maybe you know it. I don't know whether you know it or not. It's a good ways. I would hate to judge the difference and be a whole lot wrong, but a pretty good ways, I tell you for sure.

Q You are talking about the pilot house to boiler deck?

A Down to the boiler deck. Well, it's about, I would say, 20 feet. That is guessing, understand. That is not measured. As I said, about 20 feet though.

Q No more than that?

A I wouldn't think it's more. I am not going to say that it is or not now. I am just guessing at that. But it could be a little more or it could be just a little bit less.

Q When your captain blew the signal, had you seen the tanker then?

A No, sir, I didn't, I haven't, I didn't see it then. I never did hear him answer the passing whistle.

Q What was the first thing that drew your attention to the tanker?

A Well, sir, to be honest, I was just setting there looking, just setting there studying and looking, and naturally I wondered what was going to pass, too. You know one thing--

Q When you first saw the tanker, had it passed the lead barge in your tow?

A Oh, yes, it had passed the lead barge.

Q How many string of barges did you have in front of you? Do you recall?

A I believe we had four lengths that night. Seems to me we had about 17 loads, best I remember. We had a pretty good tow.

Q Well, assuming that you had about four lengths when you first saw the tanker, how many lengths of the tow had it passed?

A Well, it was almost past, plumb past the tow. It was just kindly out over the face barge when I seen it. The face barge is the barge next to the boat.

Q The tanker was abreast of your first string of barges when you first saw it?

A Yes, sir, it was coming down and it was comin; pretty fast, I tell you, and when I looked up, like I say, kind of looked over the tow just a little-- no; much -- just left a little and I seen it.

Q Do I understand your testimony to be that the bow of the tanker was abreast your first string of barges when you first saw it?

A Well, might have been just a little abo.e abreast of it, if you call "abreast" right there, you know, (Demonstrating with hands)-- might have been just a little above the barges.

Q Nearer the stern of the barges than the center?

A Yes, sir, nearer the stern of the barges than the center. That is what I said.

Q That is where the bow of the tanker was when you first saw it?

A Yes, sir, not very far above the barge, just a little, and coming kindly into an angle, and I had all the reason in the world to thi k it was going to hit because it was coming in an angle. If it had been going down straight, I wouldn't have thought -- but, you know, fact of the business, I expected it to hit about midships on the boat. That is what I expected, but it went on back and hit the stern, passed on back.

Q Could you tell if your boat was turning to the right?

A No, sir, seemed like our boat was going pretty straight up. We were offshore a pretty good ways. Seemed straight.

Q If you couldn't see the shore--

A I couldn't see--

Q You were unable to tell--

A --unable to tell--

Q --what heading the NEW ORLEANS and tow was on?

A Well, I wouldn't say we were going straight, but I believe we was really going straight because if we had been turning--that makes me believe--if the stern of our boat would have been out, it would have been throwing us further on the shallow side and he wouldn't have been trying to steer further on the shallow side because we were pretty well in shallow water then and that would have pushed us on the shallow side. That is what makes me believe it was straight.

Q If your boat had been turning towards the shallow side on your left hand bank, it would mean that he had been steering to his starboard or right, wouldn't it?

A Yes, sir, he would be, yes, sir, and that would have--

Q So you wouldn't be steering to that shallow side, but--

A --the stern of it--

Q Just a minute. He would be steering away from it with the head of his tow going to the right--

A Yes, sir.

Q --if he would have been turning? Is that right?

A Yes, sir, that is right, would have been putting the head of our tow further out.

MR. FARRELL:

I guess that is all.

REDIRECT EXAMINATION

BY MR. LEMLE:

Q And if you steer the head of your tow to the right, which way does the stern of your towboat go?

A It would go to your left.

Q That is all.

A Just like I said, we were laying on that shallow side then, and when I got out and commenced to put the boat in tow she was pretty well in like, just broke out a little, and it wasn't at no angle across the river, you know what I mean, that the tow of the boat was in line. It didn't show no indication that he had steered on it.

RECROSS-EXAMINATION

BY MR. FARRELL:

Q You are talking now about what you saw after the collision?

A Yes, sir. That is what I said. Showed it was--

Q And the collision was with the after port stern of the NEW ORLEANS?

A Yes, sir.

Q Now wouldn't that have the tendency to shove the NEW ORLEANS to your right?

A Yes, sir, but I will tell you what I think about it--now this is just opinion: I think the ship might have seen the boat, and I think he steered hard to the bank to try to keep from hitting. I believe if he hadn't he'd have hit in the center of the ship, our boat. I don't think that ship actually seen the boat until he come right on us, and when he did I think he put in to get off, like you would your car, and I think that was what put him back as far as he went. Otherwise he would have hit us broadside because he was coming in with a pretty hard angle, the bow of that ship was coming in at a pretty hard angle at that time.

MR. FARRELL:

That is all.

MR. LEMLE:

That is all. On the taking of the deposition of the engineer, Zumwalt, a call was made for the engine room log, which I now produce, the original of the engine room log, for

the period June 20, 1952 to and including the 26th day of July, 1952, when the vessel left the Avondale Shipyard drydock at New Orleans after repairs were completed, and I now hand them to counsel. I also produce and hand to proctor for the QUEMADO LAKE photostats of the deck log for the period June 21, 1952 to and including July 26, 1952, when the vessel came off the drydock of Avondale Marine Ways in New Orleans. Counsel already has a photostat of the deck log for June 20, 1952, which is the day on which the collision occurred. I have completed my testimony out of court and rest, subject to the right of rebuttal.

...Thereupon, at 11:30 o'clock a.m., the taking of the witness' testimony was concluded...

CERTIFICATE OF STENOGRAPHER

I, Helen R. Dietrich, certify that the above and foregoing is, to the best of my knowledge, information and belief, a true and correct transcription of the testimony of BERNARD L. ZUMWALT and WILLIAM G. GLOVER, taken on behalf of Libellant, in the offices of Lemle & Kelleher, Attorneys-at-Law, 1836 National Bank of Commerce Building, New Orleans, Louisiana, beginning at 10:30 o'clock a.,m., Tuesday, October 20, 1953, in the matter of MISSISSIPPI VALLEY BARGE LINE CO. VS. S.S. QUEMADO LAKE, ET AL., No. 2229, In Admiralty, United States District Court, Eastern District of Louisiana, New Orleans Division.

s/ Helen R. Dietrich
Reporter

...ooOoo...

STIPULATION

(Number and title omitted) (Filed: October 19, 1955)

It is stipulated by and between Mississippi Valley Barge Line Company through its proctors of record, and Esso Shipping Company through its proctors of record, as follows:

1. That the annexed photostat marked Exhibit QUEMADO LAKE-NEW ORLEANS-A is a true and correct photostat of the graph of the Sperry Gyroscopic Compass course recorder on the Tanker QUEMADO LAKE for June 20, 1952, and that the same is hereby offered, introduced and filed in evidence in the above entitled and numbered proceeding in lieu of the original.

2. That if W. R. Griswold of the Sperry Gyroscope Company (Division of The Sperry Corporation) were called, sworn and examined as a witness, he would testify as recited in his letter of March 7, 1955 addressed to Mr. George B. Matthews of Lemle & Kelleher, and said letter is hereby stipulated in evidence, marked Exhibit QUEMADO LAKE-NEW ORLEANS-B.

3. That this stipulation and the two attached documents are hereby stipulated in evidence without necessity for any note of evidence, this stipulation being in lieu thereof.

LEMLE & KELLEHER

BY: S/ Selim B. Lemle
Proctors for Mississippi Valley Barge Line Company and the M/V NEW ORLEANS

TERRYBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Proctors for Esso Shipping Company and the Tanker QUEMADO LAKE

...ooOoo...

EXHIBIT BURRESS 1 ATTACHED
TO STIPULATION

S/S QUEMADO LAKE

TIME AND HEADING CHART

June 20, 1952

TIME	HEADING	DIRECTION OF SWING
7:22 PM	224°	Swing left
7:24	215°	" "
7:26	170°	" "
7:28	160°	" "
7:30	146°	" "
7:32	136°	" "
7:34	120°	" "
7:36	80°	" "
7:38	45°	Steady
7:40	45°	"
7:42	45°	"
7:44	48°	"
7:46	50°	"
7:48	58°	"
7:50	70°	Swing Right
7:52	77°	" "
7:54	83°	" "
7:56	100°	" "
7:58	108°	" "
8:00	113°	Right
8:02	125°	"
8:04	132°	"
8:06	140°	"
8:08	151°	"
8:10	158°	Start Steady
8:12	158°	" "
8:14	158°	" "
8:16	158°	Start Right
8:18	180°	Right
8:20	210°	"
8:22	230°	"
8:24	240°	"
8:26	245°	Steady Peaked
8:28	240°	Start Left
8:30	180°	Left
8:32	125°	"
8:34	95°	"
8:36	94°	"
8:38	93°	Steady

TIME AND HEADING CHART

TIME	HEADING	DIRECTION OF SWING
8:40 P.M.	91°	Steady
8:42	90°	"
8:44	108°	Right
8:46	108°	Start Left
8:48	90°	Swing Left
8:49	75°	" "
8:50	40°	" "
8:51	0°	" "
8:52	350°	" "
8:53	340°	Steady
8:54	340°	"
8:55	345°	"
8:56	0°	"
9:00	55°	Swing Right

...oo0oo...

STIPULATION

(Number and title omitted) (Filed: October 19, 1955)

It is stipulated by and between Mississippi Valley Barge Line Company through its proctors of record, and Esso Shipping Company through its proctors of record, as follows:

1. If Jack Burress were called, sworn and examined as a witness he would testify as follows:

"My name is Jack Burress. I am 31 years old. I am employed by Mississippi Valley Barge Line Company and have been employed by them for seven years as of last February. My title is Junior Engineer and my duties consist of designing work, drafting and originating job orders for maintenance work performed on towboats and barges at Cincinnati.

After I completed high school, I had the following college training: one year at Ohio State in Engineering, one year at Syracuse University in Engineering, and several years of night school at the University of Cincinnati pursuing an

Engineering course, and I have approximately 120 credits out of a necessary 160 to obtain a Bachelor of Science in Engineering degree. I was in the Army for three years from 1943 to 1946, had training in radio school in the Air Corps, and was an instructor in the radio mechanic school for approximately 16 months at Truax Field, Madison, Wisconsin.

I was requested by the proctors for Mississippi Valley to plot on Engineers charts of the Mississippi River covering the stretch of the River from Bayou Goula, Louisiana to Riverton Light, first, the sailing line as shown on Map No. 48 prepared in the office of President, Mississippi River Commission (1952), and to plot on the same charts the course of the QUEMADO LAKE coming down the Mississippi River on June 20, 1952 to and including the point of its collision with the M/V NEW ORLEANS and tow. I was furnished with the Engineers Charts Nos. 26 to 31, inclusive, Map No. 48 prepared in the Office of President, Mississippi River Commission, a large aerial photographic map marked Exhibit Clay 2 on which the courses and positions had been diagrammed by Captain Clay, photostats of the bridge bell book and the engine room bell book of the QUEMADO LAKE for the voyage on which the collision occurred, photostat of the graph made by the QUEMADO LAKE's Sperry Course Recorder on that voyage and a letter dated March 7, 1955 addressed to Mr. George B. Matthews, Lemle & Kelleher, from W. R. Griswold of the Sperry Gyroscope Company, a Division of The Sperry Corporation.

I was also told that the helmsman of the QUEMADO

LAKE had testified that he was coming easy left, and that about eight seconds before the collision received an order hard right which he executed, that he was on hard right for approximately three seconds and then received a hard left order, and while he was in the process of going from hard right to hard left, the collision occurred.

With this information I plotted on Engineers Charts Nos. 26 to 31, inclusive, in green, the sailing line as shown on Map No. 48 prepared in the Office of President, Mississippi River Commission (1952). Beginning at Bayou Goula, I also marked headings with red arrows and times when the QUEMADO LAKE was on these headings, based on the information contained in the Griswold letter. I marked these headings on the sailing line prior to 8:33 P.M. and made no attempt to trace the prior course of the QUEMADO LAKE by reference to the Sperry graph or to see if it departed anywhere from the sailing line. Beginning at 8:33 p.m. off Geary I began tracing the QUEMADO LAKE's course in red and thereafter continued tracing the course up to and including the time and place of the collisionas established by me. The headings are stated in one-minute intervals, based on an estimated average speed of 17 m.p.h. by the QUEMADO LAKE. The headings and the time figures entered in red are taken from the Griswold letter. The headings and the time figures entered in yellow are derived by me from my reading of the Sperry chart. I made a complete reading of the Sperry graph in two-minute intervals beginning at 7:22 p.m. up to and

including 8:48 p.m., and from8:48 p.m. to 9: p.m. I made the readings in one-minute intervals. My readings are attached marked Exhibit Burress 1.

For further details see the 'Legend' in the lower right hand corner of Chart No. 31.

I attach Charts Nos. 26 to 31, inclusive, and signed by me in the lower left hand corner for identification."

It is stipulated and agreed that this stipulation shall be entered in evidence in the above styled and numbered proceedings without any necessity for any note of evidence, but without any admission by proctors for the QUEMADO LAKE of the correctness of any of the courses, headings, times, positions of vessels, or other data plotted by the witness, Burress, on the charts, and with full reservation on their part of their right to controvert the same in whole or in part.

LEMLE & KELLEHER

BY: S/ Selim B. Lemle
Proctors for Mississippi Valley
Barge Line Company and the M/V
NEW ORLEANS

TERRIBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Proctors for Esso Shipping Company
and the Tanker QUEMADO LAKE

...ooOoo...

NOTE OF EVIDENCE

(Number and title omitted) (Filed: March 14, 1955)

Esso Shipping Company, claimant of the SS QUEMADO LAKE and cross-libelant herein, files in evidence the following:

1) Deposition of Captain Hugo Zuener, taken at New York on 2/1/54.

2) Deposition of John R. Mosko, taken at New York on 2/1/54.

3) Deposition of Richard K. Stevens, taken at New York on 2/1/54.

4) Stipulation of parties dated 3/9/55.

5) Coast Guard testimony of Humberto R. Gonzales on pages 23 through 29 of Coast Guard transcript, introduced in accordance with stipulation supra.

6) Coast Guard testimony of James Staplin on pages 29 through 31 of the Coast Guard transcript, introduced in accordance with stipulation, supra.

7) Coast Guard testimony of Richard W. Benson on pages 31 and 32 of Coast Guard transcript, introduced in accordance with stipulation, supra.

8) Photocopy of engineer's bell book of QUEMADO LAKE for June 20, 1952 (2 pages), introduced in accordance with stipulation supra and marked "Standard." "6th C"

9) Photocopy of rough bridge log of QUEMADO LAKE for June 20, 1952 (2 pages), previously tendered counsel in lieu of smooth log identified on page 13 of Zuener deposition,

supra, and marked "Exhibit #1."

10) Extract of bridge bell book of QUEMADO LAKE for June 20, 1952 appearing in Coast Guard transcript as Exhibit 4, identified at page 42 of the deposition of Stevens supra, and which is annexed to said deposition as "Standard Oil Exhibit B."

11) Photocopy of original of bell book, previously tendered to counsel and marked "Standard Oil Exhibit B-I."

ESSO SHIPPING COMPANY

BY: KIRLIN, CAMPBELL & KEATING
120 Broadway
New York 5, New York

BY: TERRIBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Alfred M. Farrell, Jr.

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STIPULATION

(Number and title omitted) (Filed: March 14, 1955)

It is stipulated and agreed by Mississippi Valley Barge Line Company and Esso Shipping Company, the parties hereto, through their undersigned proctors of record, as follows:

1) That Esso Shipping Company, in attempting to produce Humberto R. Gonzales for a deposition de bene esse, has found that he is residing in the interior of Cuba; that at the time of collision which gives rise to this action, Gonzales was serving on board the SS QUEMADO LAKE as an A.B. seaman and was stationed on the forecastle head as lookout; and that the sworn testimony given by Gonzales to the United States

Coast Guard at its preliminary hearing be stipulated and filed in evidence on behalf of Esso Shipping Company, said testimony appearing on pages 23 through 29 of the Coast Guard transcript annexed hereto;

2) that if James Staplin were called as a witness by Esso Shipping Company he would testify that at the time of the collision giving rise to this action, he was serving aboard the SS QUEMADO LAKE as Third Assistant Engineer and was on watch in the engine room beginning at 8:00 P.M.; that no difficulty was experienced with the main engine or auxiliaries; that he answered the engine orders from the bridge telegraph and operated the throttle in accordance therewith; that the times of the engine movements are as recorded in the engine bell book by his oiler on watch, Richard W. Benson; that the oiler's entries were contemporaneously made under the direct supervision of Staplin; that he (Staplin) noted the time of collision in the bell book and initialed it "J.E.S."; and that a photostatic copy of the page of the original book is annexed hereto, marked exhibit #C" and may be filed in evidence in lieu of the original, together with the sworn testimony given by Staplin to the Coast Guard which appears at pages 29 through 31 of the Coast Guard transcript annexed hereto;

3) that if Richard W. Benson were called as a witness by Esso Shipping Company he would testify that at the time of the collision giving rise to this action, he was serving aboard the SS QUEMADO LAKE as an oiler and was on watch in the engine

room beginning at 8:00 P.M., under the supervision of Third Assistant Engineer James Staplin; that Mr. Staplin answered the engine orders from the bridge telegraph while he (Benson) noted the times thereof contemporaneously on the engine room clock and recorded them to the nearest half minute in the engine room bell book, photostatic copy of which is annexed hereto and marked exhibit # and may be filed in evidence in lieu of the original, together with the sworn testimony given by Benson to the Coast Guard which appears at pages 31 and 32 of the Coast Guard transcript annexed hereto.

MISSISSIPPI VALLEY BARGE LINE COMPANY
Libeland and Cross-respondent

BY: LEMLE AND KELLEHER

BY S/ Selim B. Lemle

ESSO SHIPPING COMPANY
Claimant and Cross-libelant

BY: TERRIBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Alfred M. Farrell, Jr.

New Orleans, Louisiana

March 9, 1955.

...ooOoo...

TESTIMONY OF HUGO ZEUNER

(Number and title omitted) (Filed:

APPEARANCES:

For the Respondent: TERRIBERRY, YOUNG, RAULT & CARROLL
KIRLIN, CAMPBELL & KEATING
(MR. RAYMOND GREENE)

FOR THE LIBELLANT: LEMLE & KELLEHER
(MR. SELIM B LEMLE)

STIPULATION

It is stipulated and agreed by and between the parties that the testimony of the witnesses, may be taken down in shorthand by Frances de Caro, and transcribed under her supervision, the formalities of signing, sealing, certification and filing being waived, all objections, save objections to the form of a question, being reserved to the trial of the cause.

It is further stipulated that opposing counsel shall be furnished with a carbon copy of the transcript without cost to him, the cost of taking the testimony and transcribing same to be a taxable disbursement.

It is further stipulated that the witnesses may be sworn by Frances de Caro, Notary Public in and for the State of New York.

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HUGO ZEUNER: a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENE:

Q Captain Zeuner, what is your present occupation, if any?

A Retired.

Q When did you retire?

A December 1st last year.

Q That was from Esso Shipping Company?

A That's right.

Q How long had you been with either Esso Shipping or the various other affiliates of the Standard Oil family?

A 24 years.

Q Now, back in June of 1952, Captain, who was your employer?

A Esso Standard Oil.

Q And what was your capacity at that time?

A Master.

Q And on what ship were you serving during the month of June 1952?

A The QUEMADO LAKE.

Q Is that a vessel that was under charter to Standard Oil?

A That was under five-year charter.

Q Now, Captain, do you recall where the ship was, geographically speaking, on June 20th? We are talking of 1952 now.

A In the Mississippi River.

Q Were you outbound or inbound?

A We were outbound.

Q Loaded or in ballast?

A Loaded.

Q Where had you picked up your cargo?

A Baton Rouge, Louisiana.

Q Who was taking the vessel down the river, so far as

conning her and directing her navigation?

A A river pilot.

Q How many pilots do you use going out the Mississippi?

A We use one from Baton Rouge to New Orleans and one from New Orleans to Pilottown and then from Pilottown one again to the Gulf - three pilots.

Q Under normal circumstances how many hours is it from the time you get under way at Baton Rouge until you discharge the third of those three pilots you mentioned?

A Depending on the river.

Q What is the average?

A 16, 17 hours.

Q Now, Captain, on the 20th while you were en route to sea, do you recall your vessel having a collision with a tug and tow, and the name of the tug was the NEW ORLEANS?

A Yes, sir.

Q Approximately where in the river did this accident happen, if you know?

A Approximately some place below Donaldsonville.

Q Captain, is that town you have mentioned between Baton Rouge and New Orleans or is it south of New Orleans?

A That is between Baton Rouge and New Orleans.

Q That is on the first leg of your trip going out?

A Yes, sir.

Q On that particular day did you have a pilot aboard?

A Yes, sir.

Q Do you recall the pilot's name?

A I do not.

Q On that particular day who actually was directing the navigation of the ship?

A The river pilot.

Q Approximately what time did this accident happen, Captain?

A After 8 o'clock - that would be 1618 or 1619 - no, excuse me, I got my 8 o'clock mixed up - 8.18, 8.19, somewhere around there.

Q That is in the evening, P M?

A Yes.

Q. Were you on the bridge at the time of the accident?

A No, sir.

Q Where were you?

A In my office.

Q Will you tell us, Captain, in your own words just how you first knew of the accident and what you did thereafter and what you saw?

A I felt something hitting the side of the vessel, the port side, and I immediately ran up on my bridge to see what it was.

Q Now, where were you - in your office, you say?

A In my office.

Q Where was your office with respect to the navigating bridge?

A The next deck, the deck below.

Q Was it directly underneath?

A Directly underneath.

Q There were several ways, were there not to go from your office up to the bridge?

A Yes, sir.

Q Which one did you follow that day?

A I took the port entrance, the entrance on the port side, that is the entrance to my bedroom, from the office through my bedroom and up. There is a ladder there right outside my door there to the bridge.

Q What part of the bridge does that put you on, the top of the ladder?

A On the bridge.

Q What part of it?

A The navigating bridge.

Q What part of it?

A Which side?

Q Yes - well, is it in the house or outside the house?

A Outside the house.

Q Is the ladder itself outside the house?

A It is outside the house.

Q And this was on the port side?

A Yes, sir.

Q So when you get to the top of the ladder where are you - on the port wing?

A On the port wing.

Q Now, what did you see when you got up there?

A I saw a tugboat right alongside of us. We were passing - I seen he was still scraping our side when I came up there.

Q Which side of the tug was up against you? Well, I mean was his port up against your port?

A That is what I am trying to think so I don't get confused on it - his port side.

Q Was up against your what side?

A My port side.

Q Did this tug have a tow?

A Yes, he was pushing a tow.

Q Was any part of the tow up against your ship, that you saw?

A No, sir.

Q In fact, I will cover it at this time - so far as you know did any part of the tow ever contact any part of your ship, so far as you know?

A No, sir.

Q What part of your ship was the tug in contact with when you got there?

A When I got on the bridge he was just about abeam of the bridge.

Q And was there any particular part of the tug in contact?

A I think his corner, his stern corner. He has more or less got a square stern and it was the corner of that stern.

Q That would be his port quarter, wouldn't it?

A His port quarter, yes.

Q Did you get any impression as to the angle between the two ships? By that I mean were they parallel or were they at an angle one to the other?

A If there was an angle it was a very small angle. It

seems to me it was more parallel than on an angle.

Q Did the two vessels after you had arrived on the bridge continue to stay in contact with one another for some period of time?

A Just the length from the bridge to between No. 8 and No. 9 port tanks.

Q What was the nature of their contact - were they bumping one another or scraping?

A Just scraping. From the first bump it was more or a scraping operation.

Q And the furthest aft point on your ship that was contacted was where?

A That was between No. 8 and No. 9 port tanks.

Q Did you subsequently examine your vessel and determine how far forward she was first contacted?

A Yes, sir.

Q Whereabouts was that?

A Between the No. 5 cargo hold and the No. 1 port tank.

Q How, Captain, you previously told us that this accident happened somewhere just below Donaldsonville?

A Yes, sir.

Q Now, other than that general description can you be more exact as to just where the accident happened, so far as the length of the river is concerned?

A No, sir.

Q Did you see any aids to navigation while you were on the bridge there at the time of the collision that could help you in determining where she was?

A Not immediately.

Q Subsequently, did you?

A Subsequently I did, yes sir.

Q Do you recall the names of any of these lights that you might have seen? Was it lights that you saw?

A Yes, one light was on that mile 173, I believe they call it, Rateau Point.

Q How did you know it was Rateau Light?

A I asked the pilot.

Q Do you know where with respect to that light the actual accident took place?

A Not too specifically - within a distance of half a mile maybe, maybe even less than that.

Q Do you mean within half a mile of either side of the light, or below or above the light?

A The light was almost abeam, I believe, when I got up there, just passed it when I got on the bridge. I believe it was right abeam of us.

Q You did not know the name of it when you looked at it?

A I did not know the name then.

Q Now, in matter of time how long do you think had elapsed from the time you felt the bump until the time you got on the bridge?

A Within seconds.

Q Just one flight of stairs?

A Just one flight of stairs.

Q Now, prior to feeling this bump, Captain, did you hear any whistle signals, let us say in the five minutes preceding

feeling the bump?

A I was not paying attention, I was not listening for it.

Q In other words, is it your answer you do not know whether or not there were any?

A I do not.

Q You did not hear any?

A I don't know whether I heard any or not. I didn't pay any attention to it.

Q Now, Captain, did you make any observations at the time you got on the bridge as to where your vessel was with respect to the width of the river?

A Oh, we were right up on the bank almost.

Q Which bank do you mean?

A On the right bank going down the river.

Q That would be the side of your vessel opposite to where the tugboat was?

A Yes.

Q Now, could you be more specific? How close do you think you were to that bank?

A We were very close, but how close -

Q Could you see the other bank, the left bank?

A Well, at that time I was not looking so much for the other bank, I was worrying about that bank there, that we were too close to it, but later on I saw the other bank.

Q Well, of course that was some time after the accident?

A Yes.

Q I am talking of the time the two vessels were in contact with one another. Are you of the opinion that your vessel

was closer to one bank or to the other at that time?

A. Much closer, we were right up close, as close as we could possibly get almost.

Q To which bank?

A To the right bank going down the river.

Q Will you tell us what your vessel did after that?

A We swung the vessel around.

Q That is after the vessels parted?

A After we were clear, and went upriver and anchored.

Q Captain, prior to this time you have just told us that you went on the bridge at the time of collision, when were you last on the bridge of the QUEMADO LAKE?

A I was there shortly before that. It changed watches at 8 o'clock and I was there after 8 o'clock - 8 P. M. that is - and at that time we were nearing the halfway of the distance between New Orleans and Baton Rouge, and we always send a notice of arrival and expected time of arrival to the pilots in New Orleans, so they can meet us, and we give them the time when we expect to be there.

Q So approximately how long would you estimate you were in your room prior to the time of feeling that bump?

A Possibly ten minutes.

Q Now, Captain, as you observed the bank on your right-hand side did you make any observation at that time as to the position of that bank with respect to your vessel? By that I mean were you at an angle to that bank or were you parallel with it or what was your observation, if any, of the situation?

A I would say parallel to the bank.

Q By the way, Captain, how were the weather conditions that night?

A Well, it was clear.

Q Any moon?

A Not much of a moon, it was a slight moon, a little moon, not much.

Q When you say clear, you mean it was not raining or anything like that?

A It was not raining at that particular time.

Q Did you at any time have an opportunity to observe the lights being carried by the tug NEW ORLEANS?

A Not before the collision.

Q Well, afterwards?

A No.

Q Captain, who at that time would be keeping the bellbook of the QUEMADO LAKE, bridge bellbook?

A The mate on watch.

Q Do you know who that was?

A Yes, Mr. Stevens.

Q And who would be keeping the rough log?

A Also the mate on watch.

Q Did you make any entries in either one of those books relative to this accident?

A No.

Q I show you a book that has been given to us, Captain, which I am told is the smoothlog of the QUEMADO LAKE for the month of June 1952, and I particularly refer you to the day of

June 20th, to which two pages are alloted, and ask you if you can identify it. Is that your signature on the bottom?

A Yes, that is my signature.

Q That is the smooth log?

A That is the smooth log, yes sir.

Q That is copied from the rough log?

A That is copied from the rough log.

Q That is not an original book of entries?

A No.

MR. GREENE:

Mark that for identification. The smooth log is marked Standard Oil Exhibit A for identification.

MR. GREENE:

You may inquire.

CROSS EXAMINATION

BY MR. LEMLE:

Q Captain, how long is the QUEMADO LAKE?

A She is 526 feet long.

Q And the bridge is located where, the navigating bridge, where on the fore and aft position?

A A little forward of halfway.

Q A little forward of halfway?

A Yes.

Q Now, how long would you say in time between the time you felt the bump did it take you to reach this upper bridge?

A As fast as I can run - five seconds at the most.

Q Now, Captain, you say when you got up there you found your vessel as close to the right-hand bank, right hand

descending bank, as sh- could get. How close was that?

A I cannot give you any exact measures, in feet, because that is dark and deceiving, you can't see for sure how far it is, but it was very close.

Q Do you know the depth of the water up to the bank at that part of the river?

A No, sir.

Q In taking the width of the river and dividing it into sections, where would you say she was with regard to the middle of the river?

A Way over, I mean way past the middle, way over on the right.

Q Did you tell the Coast Guard in your examination there that taking the middle of the river and the righthand bank, middle way of the right-hand half was where the vessel was, which would be one-quarter of the width of the river out from the right-hand bank?

A Will you repeat that again please? I didn't understand that.

MR. GREENE:

Did you tell the Coast Guard that -- that is all Mr. Lemle wants to know.

Q Did you tell the Coast Guard that when you came on the bridge, dividing the river into four quarters that your vessel was one-quarter out from the right-hand bank?

A Yes, I said that.

Q Now, Captain, did you leave the bridge before or after you passed Donaldsonville? Were you on the bridge when you

passed Donaldsonville?

A Just before Donaldsonville.

Q And when you left the bridge had you seen the lights of this towboat approaching?

A No, sir.

Q Had you seen her flashing her searchlight on the bank or up in the air, before you left the bridge?

A I don't think so.

Q You left the bridge, you say, to send a message advising the pilots in New Orleans what time you would be there?

A Yes, sir.

Q What time did you plan to be in New Orleans?

A I have forgotten.

Q How long did you allow the vessel to run from the place where she then was - by then was I mean where you sent the message - how long in hours or minutes did you allow to get to New Orleans?

A It is the pilot's - see, I ask the pilot when he expects to be there and he tells me the time and that is the time I send.

Q You have no recollection at all?

A No.

Q Have you a copy of the message?

A No.

Q How long normally does it take you to run from Donaldsonville to New Orleans in that vessel?

A I don't remember.

MR. LEMLE:

I have no further questions.

MR. GREENE:

I have none.

...oOo...

JOHN R. MOSKO

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENE:

Q Mr. Mosko, by whom are you presently employed?

A Esso Shipping Company.

Q In what capacity?

A As A B.

Q Are you at the moment assigned to any particular ship?

A No, sir.

Q Have you just returned from vacation?

A Yes, sir.

Q When are you due to report back to the Company?

A I have already reported back to the Company, I reported to Boston and they sent me down here to New York for this.

Q So that you are now awaiting assignment after you are through with this?

A Yes, sir.

Q How long have you been with Esso?

A Almost two years.

Q And did you have any sea experience prior to that time?

A Yes, sir.

Q How long?

A Oh, four years.

Q How long have you been an A B?

A With Esso about a year and five months.

Q Were you an A B in June 1952?

A Yes, sir.

Q Do you recall the name of the vessel you were serving on at that time?

A QUEMADO LAKE .

Q And what watch did you stand?

A 8 to 12.

Q I take it then you were on watch when that vessel had a collision with the tug NEW ORLEANS?

A Yes, sir.

Q Now, where were you and what was your duty at that particular time?

A I was in the wheelhouse, I was manning the helm, steering the ship down the river.

Q When did you take over that watch?

A Five minutes to 8.

Q Do you have any recollection of the time of this collision, approximately?

A Approximately about 8.20 or something like that.

Q So that you had been on the wheel about 25 minutes?

A Yes, sir.

Q Do you recall approximately where the vessel was in the Mississippi River with respect to the length of the river, when you took over your watch?

A Well, when I walked from aft to midships I noticed that

the vessel was more or less favoring the left-hand bank.

Q Now, that is with respect to the width of the river. What about the length of the river, do you know if you were near any particular light or any particular town, or do you have any knowledge of that?

A I noticed a few lights we just passed going down the river. There must have been a town there.

Q Do you know the name of it?

A No, sir.

Q But you did observe that you were closer to which side- the left?

A To the left side going from back aft to the bridge.

Q This was when?

A. I noticed this when I was going up to the wheelhouse.

Q That is going along the catwalk from the after house to the forward house?

A Yes, sir.

Q Where was the vessel when you actually took over from the previous helmsman, with respect to the width of the river?

A It was favoring the left bank.

Q Did he give you any course to steer?

A No, sir, at the time we were steady on, going down the river.

Q While you were on the helm how were you steering your courses?

A Well, the pilot would say "Steady", or if he wanted to go left or right, say "Right".

Q During those particular 25 minutes did he at any time

give you a compass course to steer on?

A No, sir.

Q So you were not referring to your compass, I take it then?

A Only with respect to the way the vessel was moving to the left or right. When I relieved the wheel the vessel was steady and the compass was steady.

Q Did he give you at any time during those 25 minutes landmarks to steer on, or lights?

A No, sir.

Q Do you know after you took the wheel whether you continued to follow this left-hand bank that you were near, or did you cross the river, or what?

A I didn't notice whether we were crossing the river or where we were going. We just kept it on steady course, kept the bow steady more or less.

Q You were steering a steady course?

A I was keeping the bow steady.

Q Did you continued to observe the land on your port side?

A No, sir.

Q What was the next thing you know?

A Well, the next thing the order that I got was to go left easy

Q I see. Now, what does left easy mean in degrees, what do you do when you get an order like that?

A In this situation we were loaded and going down the river, I usually go about 15 degrees left rudder, and when the bow starts to swing and meets your rudder I decrease the

rudder angle, and if the pilot said left easy I held it about 8 degrees left rudder.

Q You use about 15 to get her swinging, and then retard to about 8, is that it?

A Yes, sir.

Q Up to this time had you heard your vessel or any vessels in the river below you sounding whistle signals?

A I heard our ship sound one blast on the ship's whistle.

Q Did you hear any answers to that?

A No, sir.

Q Had you heard any whistle signals just before your vessel sounded?

A No, sir.

Q In other words, your vessel was the only one you heard?

A Yes, sir.

Q Now, when was that whistle with respect to this order you got from the pilot for left easy?

A It was almost approximately the same time.

Q You were still on the wheel, I take it, at the collision later on?

A Yes, sir.

Q Now, with respect to the time of collision, when would you put the time of this whistle signal and this left rudder - in other words, how many minutes before the collision was that whistle signal - one, two, three, four, five?

A Three minutes, possibly a little longer.

Q Now, at that time, three minutes before collision,

could you see either bank of the river?

A Well, it seemed to me that we was pretty much on the right hand bank of the river at that time, quite a ways over, it looked like we was almost on the opposite bank.

Q The opposite bank than you were close to at the time when you were taking the wheel, is that what you mean?

A Yes.

Q During the time from when you took the wheel five minutes to 8, until the time of collision, had you turned to the right?

A No, sir.

Q Still your vessel was on the opposite side of the river now?

A Yes, sir.

Q What happened after that, just in the order of sequence of events as you recall them?

A The pilot had ordered left easy and we was coming about left easy and he gave a hard right order, and then he gave a hard left order, and in the process of going from hard right to hard left we come in contact with the tug there.

Q You had not gotten hard left then before the collision?

A No, sir.

Q Well, how long before that had you put your wheel over to hard right?

A Oh, approximately eight seconds, say.

Q And how long was your wheel held at hard right before you started to come left?

A About, I would say, three seconds - just got over there

and held it about three seconds and then he said hard left.

Q Were those the only orders you received from the pilot prior to collision?

A Yes, sir.

Q Now, would you tell us what did you observe outside of your vessel during these moments preceding collision, specifically?

A I did not observe anything, I didn't see anything, I just checked the compass, see I was on a steady course, and I was just checking the compass to see if the bow was going to the left or right. I was holding a steady course.

Q Did you see the vessel you came in contact with before you came in contact with her?

A No, sir.

Q Did you ever see the vessel you came in contact with? In other words, did you ever see the towboat NEW ORLEANS?

A Well, we turned around in the river and went back up the river and I saw a glimpse of it then.

Q No, I am talking about at the time of collision, did you ever see the tug when she hit you?

A Prior to the collision?

Q Or at the time of the collision?

A Yes, I saw the tug.

Q Where was she when you saw her?

A Well, the stern of it was trying to push around, I guess he was trying to miss us or something, he just seemed to be glancing off on the fore part of the house there.

Q Which side of your vessel was it on?

A. On the port side.

Q Was it forward of the bridge?

A Yes.

Q Did you see the tug when it came in contact with your tanker?

A I heard the noise and I looked and I just saw it going by the bridge.

Q You felt it, or you heard it, did you say?

A I heard it.

Q You did not actually see the two in contact then, did you?

A No, sir.

Q At that time, or let us say a minute prior to the collision, had you observed either bank of the river?

A Prior to the collision it seemed to me that we was favoring the right-hand bank, we were up to the bushes there, we was close enough so I could see the trees and bushes there.

Q Did you believe you were closer to the right-hand bank than to the left?

A Yes, sir.

Q Could you give an estimate how far off that right-hand bank you may have been?

A Well, I don't know how much the bushes hang over the water, but it seemed to me like we was almost going into the bushes.

Q While your vessel was under that hard right helm that you executed some eight seconds prior to collision, did the vessel itself actually start changing course?

A She started coming to the right, yes, she started answering.

Q How do you know that?

A Well, I checked on the compass and she started going to the right.

Q From observing the compass could you give us an estimate how much she swung to the right under that rudder?

A Well, I would say she swung to the right a good five degrees to the right.

Q And then did your left rudder have any effect on her?

A The left rudder seemed to check the swing to the right.

Q Did it actually start swinging to the left prior to collision?

A No, sir.

Q It had just checked the right swing, is that it?

A Yes, sir.

Q Now, you told us that most of the time from the time you took the wheel to the time of the collision you were on a steady course until about three minutes prior to collision you got this left easy?

A Yes, sir.

Q While you were making that left easy turn or swing were you observing your compass?

A Just in the respect that it was moving off to the left very easy, it was decreasing in degrees.

Q From observing your compass did you observe how much you changed to the left under that left rudder?

A No, I didn't.

Q Was that the same that left easy that you told us was about eight degrees, was that held right through until the time you got this hard right order?

A Yes, it was it was held left easy all the way through.

Q In other words, is it a correct conclusion that the left easy was held for about three minutes?

A Yes.

MR. GREENE:

You may inquire.

CROSS EXAMINATION

BY MR. LEMLE:

Q Those were the only helm orders or rudder orders you got, were the left easy and hard right?

A And then hard left after.

Q And then hard left, and that is all?

A Yes, sir.

Q Tell me, did the bow of your vessel touch the right-hand bank?

A I don't know.

Q When you say that you saw this approaching towboat, how long did you have her under observation before the collision?

A I did not have her under observation before the collision.

Q How long before the collision was it that you saw her ?

A I saw it when I felt the jar and heard the noise of collision.

Q That is the only time you saw her?

A Yes, sir.

Q In other words, you felt the jar, heard the noise and saw the towboat all at the same time?

A Well yes, more or less at the same time, yes.

MR. LEMLE:

I have no further questions.

Adjourned to February 2, 1954 at 2.30 p.m.

...oOo...

Met pursuant to adjournment,

February 2, 1954, at 2.30 p.m.

Present as before.

Same stipulation as heretofore noted.

...oOo...

RICHARD KERSHAW STEVENS

a witness called by and on behalf of the respondent, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. GREENE:

Q Mr. Stevens, by whom are you presently employed?

A Esso Shipping Company.

Q In what capacity?

A Junior third mate.

Q Are you assigned to a ship?

A I was up to today, I just paid off today.

Q From what ship?

A The ESSO HARTFORD.

Q And what are your plans now?

A I plan on going on vacation.

Q You are still with the Company?

A Still employed with the Esso Shipping Company.

Q Mr. Stevens, how long have you been going to sea?

A Well, since about 1942.

Q How long have you been going as a licensed deck officer?

A Since 1950 - you know, short intervals in between.

Q How long have you been with Esso?

A Since 1948, January 1948.

Q Between 1948 and 1950 in what capacity were you?

A Able-bodied seaman.

Q And I take it since 1950 as an officer?

A Yes. In between I had some periods as A B, where I have been up and down.

Q Was that due to the fact that you are one of the junior third mates in the Company?

A Yes.

Q And what was your experience prior to 1948?

A Well, prior to 1948 I was - well, from between 1946 and 1948 I did not go to sea.

Q What about between 1942 and 1946?

A 1942 and 1946 I was in the Navy.

Q As an officer?

A No, sir, I was a gunner's mate.

Q Now, going back to June 20, 1952, I take it you were with Esso?

A Yes.

Q What ship were you serving on then?

A QUEMADO LAKE.

Q In what capacity?

A Third mate.

Q And as third mate what watches did you stand?

A The 8 to 12.

Q So that would mean that you would be on from 8 P M to midnight?

A That's right, and 8 A M to noon.

Q How many mates did the QUEMADO LAKE carry?

A Three mates.

Q And one captain?

A One captain.

Q Did the three mates act as three watch officers?

A Three watch officers, yes.

Q Were you the watch officer on the evening of June 20th when the QUEMADO LAKE was in collision with the towboat known as the NEW ORLEANS?

A Yes.

Q What time did you go on watch that evening?

A Well, I got up there around five minutes of 8, I relieved a little early.

Q And generally speaking where was your vessel and where was it headed to?

A We were proceeding towards New Orleans from Baton Rouge.

Q Loaded or light?

A Loaded.

Q At 8 o'clock who was on the bridge?

A 8 o'clock, well, of course I was on there, and I believe the mate had just went down the row, and the master was up there and the pilot and the quartermaster.

Q Did you have a lookout posted on your vessel?

A Yes sir, he was on the bow.

Q Where was he standing his watch?

A On the bow.

Q Now, did you remain on the bridge from 8 o'clock through to the time of collision?

A Yes, sir.

Q Do you recall the approximate time of collision?

A 8.19.

Q Did any of the other personnel leave the bridge between 8 o'clock and the time of collision, that you have mentioned were on the bridge at 8 o'clock?

A Yes, sir, prior to the collision the master left the bridge.

Q Was he back on the bridge at the time of collision, do you know?

A No, sir, at the time of collision he was not on the bridge.

Q Would you describe to us briefly the weather conditions?

A Well, it was a clear night and good visibility, starlight, no moon.

Q No rain or anything like that?

A No rain - clear.

Q Any difficulty in picking up navigational aids along the bank of the river?

A No, it was good visibility.

Q Who was actually giving the navigational orders, who was conning the vessel, in other words?

A The pilot was conning the vessel.

Q Were you giving any orders?

A No, sir.

Q From the time you took your watch until the time through and until the collision did you give any orders?

A No sir, I did not give any orders.

Q Generally speaking, do you know the approximate area of the Mississippi you were in between 8 and 8.20?

A In the vicinity of Donaldsonville.

Q Heading outbound?

A Yes sir, heading south.

Q When did you first become aware of this tug and tow with which you eventually collided?

A Well, just prior to where I sighted her I saw her beam of a searchlight on the bank.

Q Was the vessel that was using that searchlight in view at that time?

A No sir, no, just prior to sighting the tow itself I did see it.

Q Was there a bend of the river between you and the tow?

A Yes. Right after I saw the beam the tow come into view around the bend.

Q When you eventually did sight the tow, what lights were you able to make out on her?

A I was able to make out his starboard running light.

Q Any white lights or towing lights?

A No sir- well,I did see the amber light, the starboard

running light and the amber light.

Q That is on the tow?

A That is on the tow.

Q In other words, she was carrying the proper lights for what she was doing, is that correct?

A Yes, there was no mistake.

Q At the time you sighted her first tell us what side of the river, if either, you were favoring?

A At what time was this?

Q When you first sighted the tug and tow.

A Well, when we first sighted her I would say we were about around, well, in the center of the river.

Q Were there any whistle signals exchanged or sounded by either of the two vessels at that time?

A Yes sir, just as soon as the tow was sighted the pilot blew one whistle.

Q Did you hear an answer to that?

A No sir, I did not hear an answer to that.

Q Now, when you sighted the tug and tow at first, where was she with respect to the width of the river?

A Well, she was coming up below the bend, below that point in the river, below Donaldsonville.

Q Was she favoring one bank or the other?

A She was favoring one bank, the port bank, coming up, which was the right-hand bank, the west-hand bank of the river.

Q That would be your right-hand bank going down?

A My right-hand bank going down.

Her left-hand bank coming up?

A Yes.

Was she into the turn yet, or how would you put her relative to the actual turn?

A No sir, I wouldn't say that she was into the turn yet when I sighted her - very close to it.

Now, will you describe the relative movement of your ship thereafter?

A Well, we were coming down, we were more or less edging over towards the right-hand side of the river.

Would you be a little bit more explicit? What do you mean by edging over towards the right?

A Well, sort of just drifting over, going ahead and drifting over - not drifting, but edging over towards the right-hand side of the river to get into the bend of the turn.

And what did you observe on the tug and tow as it approached?

A Well, immediately after we blew the whistle we observed that she was turning to the right.

How could you tell that?

A By the relative - by the way her lights were, you could see her lights moving.

Did she appear to you at that time to be a large tow?

A Yes, sir, she appeared to be a large tow.

Were any other whistle signals sounded by you or the other vessel?

A No sir.

Q Approximately how far away do you think the tug and tow was from your tanker when you first observed her?

A Well, I would say around a mile.

Q How far away do you think they were when you sounded that one-blast signal?

A Well, we sounded immediately.

Q To your knowledge were there engine orders given during this period of time?

A Prior to collision?

Q Well, up until, let us say, a minute or so before collision.

A No sir.

Q Now, getting down into the minute or so before collision, how were the two vessels then relative one to the other?

A Well, we were way over on the right-hand side of the river in the bend.

Q Now, could you give us something more definite as to your relative position from one bank to the other?

A Well, I would say we were around a fifth to the right - in other words, we had around four-fifths of it to the left of us.

Q In other words, if you divide the river into fifths, you had one-fifth on your right-hand side and four-fifths on your left?

A Yes.

Q And whereabouts with respect to the bend were you at that time? Were you into the bend or were you still approaching it,

or what?

A We were just about getting into the bend at that time.

Q And what about the tug and tow?

A Well, he was just a little bit below the bend.

Q Now, how did it appear to you then so far as the possibility of the vessels meeting and passing each other?

A Well, it appeared to me as though I saw the tow turning and his port side light came into view, and it looked like it would clear, it looked like although a close passing, but it would be clear.

Q Would you tell us exactly what happened thereafter, right through to the time of collision?

A Well, shortly after that the tow kept on turning to the right and immediately it appeared to be that it was going to be very close, so the pilot stopped the vessel and gave hard right.

Q How long before collision were those two orders, stop and the hard right?

A Well, the stop was about a minute before collision, I would say.

Q And when was the hard right relative to that stop bell-before it, after it?

A Just a little bit after it.

Q Now, what were the next engine or helm orders that were given aboard your vessel?

A Well, shortly after that it was the telegraph was given, the engine order was given full ahead and the helm was put hard left.

Q Now, relative to the actual time of contact how long before collision would you say that that full ahead was given?

A I would say about half a minute.

Q Then how long would you say that the engineroom telegraph was on stop?

A I would say about half a minute.

Q You don't know how long your engines were actually stopped, do you?

A No sir.

Q In fact,do you know how long the engines were actually stopped?

A It is hard to tell, I couldn't tell.

Q You were not in the engineroom?

A No sir.

Q Do you know whether or not your stop bell to the engine-room was answered by the engineroom?

A Yes sir, it was answered.

Q Would you be a little specific and tell us how you know when a bell is answered?

A Well, when a bell is answered - I put the receiver on stop and when they answer they put their receiver on stop, which throws an arrow up on the engineroom telegraph and that indicates that they received it and answered it.

Q Is there any bell rings when they do that?

A Yes, there is a bell connected with it.

Q So is it proper that you can both see and hear that they answer the telegraph?

A There is a night light on the telegraph and you can also hear when they answer it.

Q Going back to this hard left helm order, how long prior to the initial contact would you say that order was given?

A Hard left - well, he went hard right and then hard left - shortly before, say around half a minute.

Q Before collision?

A Yes.

Q Then the hard left was given about the same time as the full ahead?

A Yes.

Q Then in your estimation how long was the vessel under the hard right?

A Well, about half a minute.

Q These are approximations?

A These are approximations.

Q Now, during this last minute that you have been describing to us on the tanker, were you during that minute observing anything so far as the tug and tow was concerned?

A Well, I was observing him turn to the right.

Q Did you see the head barges of that tow?

A Yes, I saw the head barges and they cleared us.

Q Well, as a practical matter, did any of the barges ever touch your tanker?

A None of the barges touched the tanker.

Q Was the only contact in this case between the tugboat itself and your tanker?

A Yes.

Q Did you observe the head barges as they passed abeam of your bridge?

A Yes sir, they were clear.

Q How far abeam would you say the head barge was?

A I would say around 75 feet.

Q And at that particular time about how far off the right bank would you say you were?

A I would say about one-fifth of the distance.

Q You could not give an estimation in feet, could you?

A Well, I am not too much of a good judge of feet - one-fifth of the width of the river.

Q Are you familiar with how wide the river is in that particular spot?

A I believe it is 1800 feet, somewhere around there.

Q One-fifth of that would be about 300 feet - is that about what you have in mind?

A Around that, yes.

Q Did you observe the rear tier of barges pass abeam of your bridge?

A Well yes, I observed the whole tow.

Q And they passed clear of you, did they?

A Well yes - of course they were much closer than the head barges.

Q During this period of time how would you say the center line of your ship was with respect to the right-hand shore line? Was it at an angle to it or was it parallel to it?

A I would say it was parallel, we were parallel to the right-hand bank.

Q Then what happened during those last few moments before collision that you could observe?

A Well, I observed - well, the rear of the tow - the tow-boat itself seemed to be swinging to the right, which made the stern swing to the left, and he seemed to swing right into our vessel.

Q Did you observe your vessel sheer at any time before collision?

A No.

Q Could you tell whether or not your vessel smelled bottom?

A No sir, I didn't notice whether she smelled bottom or not.

Q Now, other than these four orders you have told us of Mr. Stevens - and let me just repeat them - there was a stop and a full ahead within about a minute of collision, and there was a hard right and a hard left within about a minute of collision?

A Yes.

Q Now, were there any other orders on the bridge of your ship other than those four prior to collision?

A Not that I can think of.

Q Now, what part of your ship was first touched by the tow-boat?

A Well, the bow section, which was around No. 1 tank on the port side.

Q And that is where the ship is out to its full width?

A Yes, that is where she starts to curve around.

Q Was it just one contact, or how would you describe it?

A Well, as it appeared to me she hit by No. 1 and it sort of scraped along the side and it took another good wallop around 7 or 8 tank on the port side.

Q Could you observe from your position what part of the towboat was touching your ship?

A It appeared to be the stern section of the port side of the towboat.

Q Would you briefly tell us just what happened after the initial contact and the two vessels separated - what did you do?

A Well, the master was almost up on the bridge immediately and we stopped the vessel and turned around and anchored and inspected our damage, and see how the towboat made out.

Q Mr. Stevens, I would like you to look at this sketch that has been previously introduced into this case as Exhibit Clay 2. You will notice it is an outline of the river and that bend that you were negotiating that particular evening, and you will notice that there are two lights, one on your left bank and one on your right bank, indicated on this chart.

A Yes.

Q Now, could you without marking this exhibit indicate to us whereabouts on this chart you would estimate that the collision took place?

A Well, that would be just below, I would say about where this green vessel is here, with one exception though, we were more or less parallel to the river, we were in the same respective position.

Q In other words, you think the collision took place about where this green outline is?

A About there, but we were parallel to the bank.

Q As we look at this little sketch, would your bow be more to the right or to the left as depicted in this green outline?

A Our bow would be more to the right.

Q Did you observe this light on the right-hand bank as you went by there that evening?

A Yes.

Q About how far would you say you were below that light at the time of collision?

A Well, I would say around -

Q Or did you make any observation?

A Well, it is a little hard to say, you know.

Q Well, give us an approximation as you observed it that evening, how far below the light you were?

A Well, I more or less pointed it out on the chart.

Q Well, I wanted it from you in another way, Mr. Stevens - in feet or yards or miles, how far below that light do you think you went before you came into collision with the towboat NEW ORLEANS? Did you go a quarter of a mile, a half mile, three-quarters of a mile, or feet - any way you want to express it?

A About a quarter of a mile.

Q Mr. Stevens, I show you what has been previously identified by your master as the smooth log of the QUEMADO LAKE, and I show you the particular pages alloted to June 20th, and first I ask

you if you can also identify this book?

A Yes, sir, that is the smooth log of the QUEMADO LAKE.

Q Who draws up this smooth log?

A I do.

Q Is anything we see on these two pages in front of us in your handwriting?

A Yes sir.

Q Where do you get the information you have written there?

A From the rough log.

Q Is there anything in the rough log that is not copied into here?

A No sir,everything is copied into there.

Q I particularly draw your attention to the entry on the bottom, four lines of the lower right page,which has to do with this collision, as you will note, and ask you do you know who wrote the original of that entry in the rough log?

A I did.

Q Is there any difference between what is in the rough log, as you remember it now, and what is in this smooth log?

A No sir, that is exactly the same.

Q Who kept the bridge bellbook on the QUEMADO LAKE?

A I did,sir.

Q And how is that kept insofar as time is concerned? In other words, when do you put the entries in that bridge bellbook?

A Well, I put them on immediately after I receive a command or engine command.

Q In other words, they are simultaneous entries?

A Yes, I check the clock right away and put the time in.

Q Now, Mr. Stevens, regretably we do not have the bridge bellbook here because it is still aboard the QUEMADO LAKE, which is no longer operated by Esso, but we do have an extract from the bridge bellbook prepared by and included in the record of the Coast Guard. With Mr. Lemle's permission I am going to read to you a few of the simultaneous entries that are in here, and ask you if purely from memory they coincide with your recollection of the events that evening. (Reading) "2010 full ahead, 2018 stop, full ahead, 2019 hit barge and tow, stop, half ahead"?

A Yes, I remember those, they are as I wrote them.

MR. GREENE:

Coast Guard Exhibit 4 is deemed marked Standard Oil Exhibit B, and we will incorporate that in this record.

Coast Guard Exhibit 4 is marked Standard Oil Exhibit B.

MR. GREENE:

That is all.

CROSS EXAMINATION

BY MR. LEMLE:

Q Now, Mr. Stevens, I understood you to say that right after you had passed Donaldsonville you then saw the searchlight of this towboat below the bend being played on the bank, is that correct?

A Yes sir.

Q On which bank was she playing the light?

A On the port bank - that is the west bank.

Q Your port bank?

A The west bank.

Q And you could not at that time see the outline of either the towboat or her tow or her lights, other than the searchlight?

A No sir, it was immediately after, just a short interval that she come into view, her lights came into view.

Q How long a time would you say?

A Well, I would say less than a minute. It was a very short time afterward.

Q Did you ask the pilot or did the pilot have anything to say as to the character of vessel you were meeting?

A No sir.

Q And at that time you were running full speed ahead?

A Full speed ahead, yes sir.

Q And had been running full speed ahead, according to your bellbook, since 2010?

A Yes, sir.

Q Now, how do you keep that bellbook - in half minutes? In other words, anything that happens between the minute and half minute you log on the minute, and anything that happens between the following minute and the half minute you mark on the half minute?

A Well, we keep them pretty close to the minute, sometimes if it is just short of the minute we can't put it down to one-tenths of the minute so we just more or less favor the nearest minute, but if it is close to the minute we put down half minutes.

Q Well, in this abstract of the logbook there is five half minute entries. Those half minute entries you mean happened closer to the following minute?

A No sir, when it is on the half minute we log it as a half minute.

Q Suppose it happened at three-quarter minute, how would you log it?

A Well, I would favor the closest minute. After all, we can't read minutes that closely on the clock, we don't have the second sweep.

Q If something happens at 2005 you log it at 2005?

A Yes.

Q If it happened at 2005½ you log it at 2005½?

A Yes.

Q If it happens at 2005-3/4 you would log it at 2006 or would you log it at 2005½?

A Well, I would favor the closest minute - that would be 6.

Q Now, you were operating the engineroom telegraph yourself?

A Yes.

Q On orders from the pilot?

A Yes sir.

Q And how was the helmsman getting his orders? Was the pilot giving his orders and you repeated to the helmsman, or was he giving it to the helmsman?

A He was giving it direct to the helmsman.

Q I see by your log from the abstract that I have, that five

times before this collision your vessel passed tows, and each time reduced speed to half speed, but on this particular time when you had the collision you did not reduce to half speed before undertaking to pass the NEW ORLEANS and its tow. Do you know why?

A No sir, I don't know why exactly.

Q Now, going to the meeting - when you first saw the NEW ORLEANS and the tow, you have stated that your vessel was about in the middle of the road?

A Yes, she appeared to be in about the middle of the road.

Q And you have also stated that the NEW ORLEANS and her tow were favoring your right-hand side of the road?

A Yes, sir.

Q And the pilot blew one?

A Yes sir.

Q Without having received any signal from the towboat that you heard?

A Yes.

Q And you heard no answer?

A No sir.

Q But nevertheless you continued full ahead without having any agreed passage agreed on - is that the story?

A Well yes, but immediately after we blew the whistle you could see the tow turning by her lights and you could more or less judge that it would be a port to port passing. He was turning to the right.

Q And at that time, however, the towboat NEW ORLEANS and her

tow bore well on the starboard side of your vessel?

A No, I wouldn't not say well -

Q Well, if you were in the middle of the river and he was favoring the right bank, why would he not be?

A Well, you have to take the bend into view. It is not a straight line there.

Q Well, so far as your courses were concerned, or your projected courses, he was well to the right of your projected course?

A No, I would not say he was well to the right because he was below the bend and he could not be too much to the right.

Q Will you state whether or not, with your vessel in the middle of the river and with the approaching vessel nearer your right-hand bank of the river, it was necessary for you to cross his bow or for him to cross your bow in order to make a port to port passage?

A Well, it would be necessary of course for us to cross his bow to make a port to port passage.

Q And did you undertake to cross his bow? Did your vessel cross the NEW ORLEANS bow?

A It did not appear to me that he was on my starboard side very much.

Q Well, Mr. Mate, will you tell me how, when one vessel is in the middle of the river and the other vessel is on your right-hand side of the river, will you explain how the two vessels can make a port to port passage without one crossing the bow of the other? Explain that to me.

A No sir, we would have to cross his bow.

Q And you say that when you first saw him you saw his green light?

A Yes sir.

Q And after that what lights did you say you saw?

A Well, right after that I saw him start to turn and shortly after that I saw his red light.

Q Well now, consider: Was the reason why you saw his red light because he was turning or because your vessel was crossing his bow?

A. Well, it appeared to me it was because he was turning.

Q And you judge that from the fact that you saw a change from the green light to the red light, and that is what you base your testimony on that he was turning?

A Yes, his lights, and that is the only thing I can judge it by.

Q His running lights, isn't that what you are talking about?

A Yes, and his amber light too.

Q And where is that amber light situated?

A It was in the center between the red and green lights.

Q Now, you have stated that you were coming down in the middle of the river, and you "edged", is the expression you used, over toward the right-hand bank. What was it edged you over? Was there any helm change?

A Well, I don't recall the exact helm orders too clearly, but it appeared to me like we were edging over toward the right-hand bank of the river - whether we were going over by the current -

I don't recall the helm orders clearly.

Q As a matter of fact, Mr. Mate, didn't you keep a straight course right across the bend and across the river?

A Yes sir, but that gives you the impression that you are going across.

Q Well, you were not edging across, you were going head on or stem first across the river, isn't that a fact?

A Well, one bank was getting further away than the other.

Q Did your bow hit your right-hand bank?

A Not to my knowledge, no.

Q Now, coming back to the bellbook: Your bellbook shows 2018 stop and full ahead. That means then, as I translate it from your testimony, that the stop and the full ahead were both given between 2018 and 2018½?

A Yes, about a half minute in between.

Q Was there a half minute in between?

A Yes sir, there was about half a minute in between, she was stopped for around half a minute.

Q Then why didn't you log the full ahead at 2018½?

A Well, everything is coming so fast and happening so fast that, you know, it is hard to do. You just get a quick glance.

Q Well, you marked five other half minute movements there?

MR. GREENE:

Wait a minute. This man was not on watch prior to 8 o'clock.

MR. LEMLE:

I accept the correction.

A. There was so much tension and anxiety at that last minute.

Q. Well, when you were on watch at 2027½ you marked a full astern 2027½?

A. Yes, but everything was all over then - well, it happened then.

Q. In other words, what you are saying is -

A. Well, I had enough time to look at the clock and record the bell at the exact accident, but when you are trying to watch the towboat and the helm orders and everything else you might be a little, you know--

Q. I thought you said you were not watching the helm orders, that the pilot was giving the helm orders direct to the helmsman?

A. Yes, sir, but I always watch the helm orders. I noticed the hard right and hard left orders. As I said, prior to that I did not watch the helm orders too closely, but whenever there is anything important coming up like an important turn or making a little way for a vessel to give room to a vessel, you always make sure to watch the helmsman to make sure he puts the wheel the right way.

Q. When this collision occurred, you were then going full ahead, is that right?

A. Yes.

Q. And the order stop and half ahead both appear at 2019. How long after you hit was the stop order given?

A. Well, just a few seconds, just right after we hit he stopped it, just a couple of seconds.

Q. And how long before the half ahead was given then?

A Well, I don't recall exactly. It was just shortly after that the half ahead was given to swing her around, turn around and anchor.

Q How far down the river did you go after this collision before you turned around to anchor?

A Well, right after that we started practically turning immediately, which was just right after that, and how far we advanced in our headway - well, I would say not over a mile, about a mile I would say.

Q Do you know what the draft of your vessel was? Did you enter the drafts in your logbook?

A Yes, I believe it was over 31 feet.

Q Is that mean?

A Mean draft, yes. It was more or less on an even keel.

Q Not much difference, not much drag?

A Not much drag.

MR. GREENE:

Let the record show that the log indicates at the time of sailing from Baton Rouge, the QUEMADO LAKE was drawing 30 feet forward, 31 feet 10 inches aft, 30 feet 11 inches mean.

MR. LEMLE:

I believe that is all with the understanding that we will use either the extract from the bellbook which has been identified or that you will produce the original, which I do not insist on?

MR. GREENE:

I am doing my best to get it anyway.

REDIRECT EXAMINATION

BY MR. GREENE:

Q Just one question, Mr. Stevens: On that evening as your vessel was running the reach of the river from Brainger Point to Rateau Light, how did Rateau Light bear from your vessel?

A She was ahead, in steering forward, she bore dead ahead.

...ooOoo...

EXTRACT FROM COAST GUARD HEARING -HUMBERTO R. GONZALES

* ** * ** * ** *

A witness was called, informed of the subject matter of the investigation and duly sworn.

Examined by the Investigating Officer:

1. Q. State your full name, home of record and present employment.

A. Humberto R. Gonzales, Havana, Cuba, employed as A.B. with the Esso Shipping Company on the QUEMADO LAKE.

2. Q. Were you employed on that vessel at the time of the collision with the tug and tow on the 20th of June in the Mississippi River?

A. Yes, sir.

3. Q. Did you have a duty status at that time?

A. I had just relieved the lookout on the bow about 3 or 4 minutes to 8.

4. Q. Did you have any special instructions when you relieved the lookout?

A. No, sir. None at all.

5. Q. Did you sight the opposing vessel with which collision was had, previous to the collision?

A. Oh, yes. I saw the powerful search light of that boat, of that towboat. She was looking around the shores with the search light, Before I saw it, many minutes before we got to the bend, before the tugboat was in sight, I saw the search light.

Q. On which bank was the tug closer to?

A. Left hand bank. She was playing all around, but mainly to her left port side.

Q. Did you report it?

A. No, sir. I didn't think it was necessary.

Q. Did you observe this other vessel closely as you came closer to each other?

A. Yes.

Q. Will you describe the impression you got as to the approach of both vessels?

A. Yes,when we went into the bend, we could see them coming around the bend. It was a big tug. Very long. Naturally I could see her because she was playing her search light and everything. Seemed like it was just a normal crossing, just a normal passing.We blew our horn -- is that the name -- our whistle and they answered so. Everything was usually according to what should be, crossing each other. I notice how long she was. She was practically in the middle of the river, this tug. She was turning very slowly to her right, her starboard. It was turning and we were turning to her right, her starboard. It was turning and we were turning too. Few minute everything was going to be very close crossing. Then it happened so fast,

she just drift against us very hard.

10. Q. When the bow of the vessel approached the lead barge of the tug, approximately how much clearance was between.

A. In meters you mean?

11. Q. Either.

A. Very hard to say. I can't say. It look to me like we had plenty.

12. Q. At any rate, the lead barge of the tug cleared you by plenty of distance?

A. Yes, it was cleared very well.

13. Q. You stated that your vessel sounded a whistle?

A. Yes.

14. Q. And that you heard an answering whistle?

A. Yes.

15. Q. One or two?

A. One.

16. Q. After this, did you ever hear any more blasts from either vessel?

A. None at all. I knew there was no more warnings; no more whistles.

17. Q. There is no doubt in your mind but that you heard an answering blast?

A. That's right.

18. Q. Was the tug in tow in full view of you then?

A. Yes, sir. She was brightly lighted, the tow itself. I could see the navigation lights.

19. Q. At the time the whistle was sounded, you could see the red and green lights of the tug.

A. Yes, I did answer yes to that. It was in plain view.

20. Q. How about the side lights, the red and green?

A. I saw both of them very clear.

21. Q. Did that situation, as to the red and green lights ever change before collision occurred; did one of them go out?

A. I don't think so. I saw them very clear. I didn't know after it passed.

22. Q. Before collision occurred?

A. No, they were very clear.

23. Q. Both red and green lights?

A. Yes. sir.

24. Q. Shich vessel sounded the whistle first, the other vessel or the QUEMADO LAKE?

A. The QUEMADO LAKE.

25. Q. Did the tug answer that immediately or was there some appreciable time elapsing before the answering?

A. Normal time, a few seconds.

26. Q. Had you been ordered, could you have dropped the anchor of the QUEMADO LAKE?

A. Yes,if I had been ordered. As a matter of fact, we did a few minutes after that.

Examined by the Counsel for the QUEMADO LAKE:

27. Q. Just one thing not clear to me. You state that you could see both the red and green lights of the oncoming vessel. Which of those two lights did you see first?

A. At the same time. They were coming this way, already here. We were practically in front and I could see both.

28. Q. When did you lose sight of either red or green light?

A. When they passed us.

Examined by the Counsel for the NEW ORLEANS:

29. As you were coming around the bend prior to the collision, how far from were you from the right descending bank?

A. How far we were from the right bank? A little bit to the right. A little bit to the right of the center.

30. Q. What was your position as you passed the lead barge of the tug?

A. You mean the bow or her navigating lights? There was plenty of space for us to clear.

31. Q. What was the position of the QUEMADO LAKE in relation to the middle of the river?

A. We were swinging to the right, going away from the center.

32. Q. How far were you from the bank to the center of the river?

A. A little off towards right bank from the center of the river.

33. Q. Did you maintain that position until time of collision?

A. No, we were swinging to the right all time.

34. Q. Right up until the time of collision you were swinging to the left but you were still approaching--weren't you still in the bend as you collided?

A. Oh, naturally, when we collided.

35. Q. To negotiate the bend you would swing to the left?

A. Yes.

36. Q. Do you know how long prior to the collision the vessel would actually start swinging to the right. As I understand your testimony, you were still swinging around the bend to your left as you passed a barge and tug.

A. Yes. We were approaching to each other.

37. Q. Did the QUEMADO LAKE at any time swing to her right?

A. Yes, we were approaching each other and our bow was generally swinging to the right pretty fast to get any room to the passing.

38. Q. Did you at any time prior to the collision feel the helm answer to the rudder on a hard right?

A. I notice we were running away from the oncoming vessel. We were drifting away. That must have obeyed the helm, naturally.

39. Q. Could you estimate how far out the QUEMADO LAKE was from the right shore?

A. We were much more nearing--it is hard for me to calculate at this moment what it was.

40. Q. Would you say a third of the way over?

A. Yes. Much more near. If we had kept going to the right, we would have gone aground.

The Captain of the QUEMADO LAKE did not desire to examine the witness.

Redirect examination by the Investigating Officer:

41. Q. You state that you were drifting to the right away from the other vessel. Can you be sure that it was actually the bow of your vessel turning away or the other vessel turning

away from you?

A. As a matter of fact, I can't. I don't know which one was swinging, but we were separating from her, from the bow on the tow. We were separating from each other more and more distinctly.

Redirect examination by the Counsel for QUEMADO LAKE:

42. Q. Did you notice any navigation lights on the river?

A. No, sir.

43. Q. You said earlier in your testimony that the oncoming vessel drifted against the ship and hit it hard. What do you mean drifting?

A. It seems to me that we were passing already and suddenly the stern part of the tug, she look like she had lost control and that current was pushing her against us. Suddenly she came against us. Very suddenly and hard. Wasn't any time to do anything at all. We were passing each other clear, and then her stern drifted.

44. Q. When you first got an overlapping between the vessels, how were they, parallel or was one at an angle?

A. Parallel. We were trying to go around the bend.

45. Q. When you first started overlapping, did you enough room to pass free?

A. Yes, we had plenty room to pass.

46. Q. Did the stern of the tug swing against you as you passed?

A. Yes, sir. This is the bend and we were approaching this way. Look to me we were just going away from him and she just drifting like the current was pushing her so hard.

47. Q. Can you describe that orally to us. As both were coming around the bend, were you meeting in the turn of the bend or out.

A. When we approach each other, we were both in the bend. He was swinging to his right and we were swinging to our left. Then I notice our bow separating itself a little bit from the oncoming vessel.

48. Q. The head barge?

A. Yes, and it seems that everything was clear, plenty of space between us and all the barge clearing us very well, enough for safety. When we were only half passed each other, the stern part of the tug was suddenly coming too fast against us and we couldn't clear, so she hit us. Is that clear enough, sir.

49. Q. Do you have any idea where the first point of contact with your vessel?

A. Little confusion as to that. That's the truth. I run from the center of the bow to the side and hung over the bulwark on the right to have a look to see what was happened. At that moment I wasn't nervous. I was just interested. I had a very clear look when she hit us. I saw her hit us once. I saw the sparks in the sight of the collision, and that sight where the collision occurred about the 8th tank.

50. Q. That's the only collision you saw?

A. Yes. She could have hit us more, but that's the only one I saw.

5. Q. Could you see the wake of the towboat?

A. Yes.

52. Q. Could you tell from that about how fast the wheel was turning?

A. She was turning very fast.

53. Q. Was there foam coming out from behind?

A. There was a little foam. I couldn't say she was turning to the right or to the left.

Redirect examination by Counsel for the NEW ORLEANS:

54. Q. You were not able at any time prior to the collision to tell which vessel was going into the other, and since you were just watching you weren't able to tell which was coming into the other?

A. That's right, but in the last part, we were more or less steady and the other vesse" came very fast.

55. Q. Was there any object that you were able to relate the motion of the other vessel to your vessel to see whether you were going toward it or it going toward you?

A. That's a very good question. We were swinging to the right just few seconds before. We were maneuvering out ship. I don't believe we swung against him. I actually believe it was he who swung against us, because the current was pushing him against us.

56. Q. You didn't know as a fact which vessel was causing the vessels to come together?

A. Well, sir, I'm sorry, but I believe the other vessel came against us. The stern part.

57. Q. Had the QUEMADO LAKE slacked its speed or did there seem to be any change in the engine speed prior to the collision?

A. I couldn't say, sir. Seems to me we were in the same speed all the time.

Neither the counsel nor the party in interest desired further to examine the witness.

The investigating officer did not desire further to examine the witness.

The Investigating Officer informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned and withdrew.

A witness was called, informed of the subject matter of the investigation and duly sworn.

Examined by the Investigating Officer:

1. Q. State your full name, home of record and your present employment.

A. James Staplin, 5554 Howard Avenue, Brooklyn, N.Y., third assistant engineer QUEMADO LAKE.

2. Q. Were you on board that vessel at the time of the collision on 20 June?

A. Yes, sir.

3. Q. Did you have a duty status at that time?

A. On watch at that time.

4. Q. Who, besides yourself, was in the engineroom at the time of collision and previously?

A. At the time of collision, the fireman, oiler and

myself.

5. Q. Did you record all bells that were received from the bridge during the time immediately preceding and up through the collision?

A. Yes, sir.

6. Q. Do you have the engineroom bellbook in hand at this time?

A. Yes, sir.

7. Q. Will you produce it?

A. The bellbook was produced and identified and offered for inspection to parties in interest. There being no objections, it was admitted in evidence, certified extract therefrom of times appertaining marked 4.

8. Q. Did you or the oiler actually write the entries in this book?

A. The oiler made the entries in the book except for the note "Felt jar, 819".

9. Q. Do you have any reason to doubt the authentication of these entries?

A. No, sir.

10. Q. From your answering of the bells, had all entries been made for different bells for maneuvering the engine?

A. Yes.

The Counsel for the QUEMADO LAKE did not desire to examine the witness.

Examined by the Counsel for the NEW ORLEANS:

11. Q. The notation in the bellbook full ahead 90 rpm's bridge, will you explain that?

A. This notation was made before I came on watch, Full ahead was 90 rpm's.

12. Q. There was no change; that was the condition when you came on watch at 8 o'clock?

A. No change.

13. Q. How much time would it take for the engines on the QUEMADO LAKE to respond when a signal was received to go from full to stop when your engines were going full as present, 90 rpm's?

A. Actually, we can't get 90 rpm's. Approximately, we make about 85 or 86 rpm's for full speed ahead.

14. Q. At full ahead, how long would it take you to stop your engines after you received the order?

A. We can stop it almost immediately. We can't judge from below how long it takes for it to stop, the vessel, that is.

Redirect examination by the Investigating Officer:

15. Q. You mean you remove the power off the shaft almost immediately.

A. Yes, sir.

16. Q. From the time of your full ahead at 808½, how many revolutions had your engines attained by 818?

A. Approximately 85 rpm's.

17. Q. You believe you would attain it in that length of time?

A. Yes, sir.

The Captain of the QUEMADO LAKE did not desire to examine the witness.

No further questions.

The Investigating Officer did not desire to further examine the witness.

The Investigating Officer informed the witness that he was privileged to make any further statement covering anything relating to the subject matter of the inquiry which he thought should be a matter of record in connection therewith, which had not been fully brought out by the previous questioning.

The witness stated that he had nothing further to say.

The witness was duly warned and withdrew.

* * * * *

A witness was called, informed of the subject matter of the investigation and duly sworn.

Examined by the Investigating Officer:

1. Q. State your full name, home of record and present employment status.

A. Richard William Benson, c/o Mrs. Zoella G. Ross New Haven, Connecticut, oiler, been with the company two years.

2. Q. Presently on board the QUEMADO LAKE?

A. Yes, sir.

3. Q. Were you on board that vessel at the time of collision on the 20th of June?

A. Yes, sir.

4. Q. Were you on duty at that time?

A. Yes, sir.

5. Q. What duties were you carrying out?

A. I was relaying the messages from the bridge and

putting it down in the bellbook.

6. Q. And you were answering the telegraph?

A. Yes, sir, and making the entries in the bellbook?

7. Q. I show you a document which has been admitted as exhibit No. 4, more specifically that sheet dated 20 June, 1952. I ask you if you recognize this?

A. That's my handwriting.

8. Q. What entries did you make?

A. 8:04 until 12 o'clock, the balance of the page.

9. Q. Can you state positively that all telegraph orders were entered in this book?

A. Yes, sir.

* * * * * * *

...ooOoo...

B O N D

(Number and title omitted) (Filed: March 14, 1955)

KNOW ALL MEN BY THESE PRESENTS, That we, Esso Shipping Company, are held and firmly bound unto the United States Marshal for the Eastern District of Louisiana, for the benefit of whom it may concern inthe sum of TWENTY FIVE THOUSAND AND NO/100 ($25,000.00) DOLLARS, lawful money of the United States of America for the payment whereof to the said United States Marshal for the Eastern District of Louisiana, for the benefit of whom it may concern, his successor and successors, we bind ourselves, our heirs, executors, and administrators firmly by these presents.

Witness our name hereunto affixed by us at the city of New Orleans, this 11th day of March, 1955.

WHEREAS, a libel has been filed in the District Court of the United States for the Eastern District of Louisiana by Mississippi Barge Line Company against the SS QUEMADO LAKE, her engines, tackle, apparel, furniture, etc., in a certain action, etc., civil and maritime, numbered 2229 in Admiralty on the docket of said Court.

Now the condition of the above obligation is such, that if said claimant abide by all the orders, interlocutory or final, of the court, and pay the said libelant the amount awarded by the final decree, rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void; but otherwise shall remain in full force and virtue.

ESSO SHIPPING COMPANY
As Claimant of the SS QUEMADO LAKE

BY: TERRIBERRY, YOUNG, RAULT & CARROLL
Its Proctors

BY: S/ Alfred M. Farrell, Jr.
Alfred M. Farrell, Jr.

...ooOoo...

PROCEEDINGS

(Number and title omitted) (Filed: March 28, 1955)

APPEARANCES:

SELIM B. LEMLE
CHARLES KOLMEYER, JR.
Lemle & Kelleher
National Bank of Commerce Bldg.
New Orleans, Louisiana
Proctors for Libellant

ALFRED M. FARRELL, JR.
Terriberry, Young, Rault & Carroll
Whitney Bldg.
New Orleans, Louisiana
Proctors for Claimant

RAYMOND T. GREENE Associate Proctor for Claimant

PROCEEDINGS in the above numbered and entitled matter heard in the United States District Court, Eastern District of Louisiana, New Orleans, Louisiana at 10:00 A.M., March 14, 1955; the Honorable Herbert W. Christenberry, United States District Judge, presiding.

The court opened at 10:00 A.M., March 14, 1955.

At this time other matters were taken up.

MR. FARRELL:

Your Honor, may I present Mr. Raymond T. Greene of the New York Bar who has applied for admission by filing the petition with certificate of character attached. Mr. Greene is a member of the Firm of Messrs. Kirlin in New York, a graduate of Fordham University Law School and we want to ask if Your Honor will rescind the requirement of the petition being filed three days in advance due to the fact that he is transient.

THE COURT:

We'll waive that requirement. Let the oath be administered.

The oath was administered by the Clerk of Court.

MR. GREENE:

Thank you, Your Honor.

THE COURT:

You are welcome.

THE COURT:

Proceed, Gentlemen. I say, are you ready?

MR. LEMLE:

Yes, sir. On behalf of the original libellant and cross respondant, Mississippi Valley Barge Line Company, I offer a note of evidence and the transcript of the deposition and the exhibits refered to in the depositions and in the note of evidence.

At this time I say to Your Honor that, as you will probably recall, at the pre-trial conference mention was made of a course recorder graph, a Sperry Course Recorder Graph, which at that time had not been read. In fact, there was some thought because one of the quadrant pins, one of the two pins, was not functioning properly, that it might not be read. Since that time and immediately after that I have been assiduously trying to get this read with, I must say, indifferent results until last week. I put Mr. Matthews on a plane and sent him to New York to the Sperry Company to, I understand, their chief man in that line, who told him he could read it and would read it and promised to send it out by air-mail on Monday of last week. As a matter of fact, it didn't come out of there until Wednesday, from out on Long Island, then, by registered mail was received at noon Saturday. We have not had any great opportunity to appraise the results of the reading. I did make some rough sketches yesterday but I am only an amateur navigator and draftsman.

THE COURT:

Have you showed a copy to your opponents? Have they had an opportunity to see it?

MR. LEMLE:

Not yet. We have agreed though that it may --- we will consider this further and I think we will look at it this afternoon and with Your Honor's permission, we would like to hold this case open for further testimony with regard -- by either side with regard to the graph of the course recorder.

THE COURT:

That is satisfactory.

MR. FARRELL:

Your Honor, libellant has rested its case other than with reference to the course recorder on the depositions which he has filed. On behalf of the respondent-claimant, the QUEMADO LAKE and the cross libellant, we want to file in evidence this note of evidence together with the depositions and exhibits annexed thereto and explained in the listing of the note of evidence and that constitutes our case with the exception of the pilot who is here to testify this morning and with e exception of whatever disposition might be made of the course recorder graph.

Does Your Honor want a short statement of what has been testified to up to this point, prior to calling the pilot, or would you like us just to begin with him?

THE COURT:

Well, if you gentlemen agree on that, yes, I think that might be helpful.

MR. FARRELL:

All right, sir. The testimony of the

witnesses of the libellant is that the towboat NEW ORLEANS ascending the Mississippi River pushing a tow of some seventeen (17) barges ahead in tiers of five; the tanker Quemado Lake of Claimant and Cross-Libellant was descending the Mississippi River loaded to an even draft of about thirty one feet (31). The collision happened shortly after 8 P.M. on a clear, dark night after the vessels had seen one another's lights at a distance of approximately one (1) mile. The collision happened in a bend on the right descending bank of the River, so that the QUEMADO LAKE bound down-river approached the bend on her starboard and the tow of the ORLEANS, bound up-river approached the bend on her port. The dispute in the case is as to the manner in which the ascending tug and tow ran the bend. It is our position that she had no business in the bend, that under the cases in this circuit -- one in the United States Supreme Court and several in the District Court, the custom of the ascending vessel staying clear of the bend and favoring the point side of the river has the force of law and that the cause of the collision was the tug boat infringing on the descending vessel's waters. The collision, as our witnesses testified, happening close to the right descending bank and at a particular point below this light known as "Rateau Light". The witnesses of the towboat on the other hand, while admitting that the collision happened in the bend--

MR. LEMLE:

Let me state the position of the tow boat. I prefer to state the position of the tow boat.

MR. FARRELL:

I didn't mean to infringe on Mr. Lemle's waters whether I did or not, but we need not go further than that statement of facts--

MR. LEMLE:

We'd like to go a little further.

MR. FARRELL:

Have we reserved this for oral argument and the memorandum for a later date? Have we?

MR. LEMLE:

True but I think I want to add to the statement. If Your Honor will recall--You saw this plat?

THE COURT:

I think we discussed this, gentlemen, at the pre-trial. My recollection now is that we did discuss it.

MR. LEMLE:

I want to add one thing.

MR. FARRELL:

Excuse me. I didn't intend this as a summary but just as a few introductory remarks so we can take up the evidence where it leaves off.

MR. LEMLE:

Let me make this little introductory remark. Mr. Farrell says the disputed question is how the tow boat ran the bend. I say it's equally in dispute how the tanker ran the bend. According to their testimony so far, we haven't had the pilot yet--their testimony is that they came down on their left bank

to the point where, according to his statement with which I do not agree, he had no right to be, cut across the river, crossed our bow after seeing us and came down or attempted to come down between the tow boat, which we say was five hundred feet (500) off the bank, tried to come down between us and the bank, then either oversteered to the left or smelled the bank, sheered out and hit the stern of the tow boat, so that as far as that is concerned, the position of the tow boat and the tow in the river made no difference because with full knowledge where the tow boat was, he undertook to cross her bow and come down the left hand side. Our position is that the position of the tow boat and the tow in the river is immaterial to this case as it developed.

THE COURT:

All right.

MR. FARRELL:

Captain Trosclair.

CARLTON FRANCIS TROSCLAIR: a witness called by and on behalf of the Claimant was duly sworn, examined and testified as follows:

DIRECT EXAMINATION

BY MR. FARRELL:

Q Please state your full name.

A Carlton Francis Trosclair.

THE COURT

What was the first name? I didn't hear it.

THE WITNESS:

Carlton, C-A-R-L-T-O-N .

BY MR. FARRELL:

Q What is your occupation?

A River pilot.

Q What licenses do you hold?

A I hold Master First Class Pilot any gross tonnage, Mississippi River from "Free Negro Point" to the head of the passage Industrial Canal, from Lake Pontchartrain --

THE COURT:

Not so fast, he has to repeat what you're saying. What licenses do you hold; Master and First Class--

THE WITNESS:

Master First Class Pilot, any gross tonnage--

THE COURT:

All right.

BY MR. FARRELL:

Q Now, covering what waters, captain?

A "Free Negros Point" to the head of the passage--

THE COURT:

Q Where is "Free Negro Point" briefly?

THE WITNESS:

That's approximately three miles above Baton Rouge.

BY MR. FARRELL:

Q How long have you held your First Class Pilot's license for the lower Mississippi?

A Well, I have held a first class pilot's license for the lower Mississippi from Norco to the head of the passage for the last four years.

Q And when did you get your first class pilot's license / from the point above Baton Rouge downward?

A In March of '52.

Q What association are you with?

A New Orleans, Baton Rouge, Steamship Pilot's Association.

Q And how long have you been a fully accredited association member?

A Since March of '52.

Q And prior to that, how long was your apprenticeship with the association?

A Well, I started my apprenticeship in March--March until June.

Q Captain, could you estimate for us--

THE COURT:

Well, let me ask you this: what was your position or were you a member of that association--

THE WITNESS:

-- as river pilot.

THE COURT:

During the time that you were accredited from Norco to the passes?

THE WITNESS:

No, sir, I was on a tow boat at that time.

THE COURT:

I see. Go ahead.

BY MR. FARRELL:

Q You might tell us what has been your towboat experience?

A Well, I've been in the River since--On the River since 1935 running between New Orleans, St. Louis, Memphis and various other places--Houston, Texas, over in Mobile and I've been in the harbor of New Orleans on the tow boats for the Bisso Towboat Company for the last twelve (12) years.

Q Now when you say the last twelve (12) years, do you mean the twelve years --

A The twelve years before I became a member of the Association, yes, sir.

Q Well since 1935, Captain, is it fair to say that you've been continuously on the River or was there any period of time that you went to other employment?

A No, I went to other employment. During the war I was at Delta Shipyard for two (2) years.

Q So how many years, totaling them all up now, have you spent on the Mississippi River in continuous service thereon?

A I'd say seventeen (17) years, seventeen (17), eighteen (18) years.

Q Captain, would you estimate for the court, about how many vessels you pilot between Baton Rouge and New Orleans, making the run both ways, in a period, say, of a month?

A I'd say we average on an average of from twelve (12) to fifteen (15) trips. That is, round trips.

Q Round trips. And how does that average compare with what you were doing in the summer of 1952?

A Well, just about the same.

Q Captain, we're investigating the collision between the tow

of the NEW ORLEANS and the tanker QUEMADO LAKE which occurred on January 20, 1952. Do you recall that?

A January 20th? I believe you're wrong.

Q Strike that. June 20th, 1952?

A I do.

Q On what vessel were you serving?

A Aboard the QUEMADO LAKE.

Q As a pilot?

A As pilot.

Q What kind of vessel is the QUEMADO LAKE?

A She is a T-2 Tanker.

Q Would you give her approximate dimensions?

THE COURT:

What kind of a tanker?

MR. FARRELL:

T-2, Your Honor.

THE WITNESS:

T-2.

A She is five hundred and twenty-five (525) feet in length, approximately seventy-eight (78) feet in width and--

Q Where did you board her?

A Boarded her at Baton Rouge, Louisiana, Standard Oil Docks.

Q Approximately what time of the day, January 20th, '52?

A Approximately 4:30 in the afternoon.

Q And when boarding, did you ascertain her draft?

A I did.

Q Would you tell us what it was?

A Approximately thirty-one foot (31) mean draft.

Q And how was she trimmed? That is, did she have a drag either way or was she pretty much even keeled or what?

A Pretty much on an even keel.

Q About thirty-one feet on an even keel?

A Yes, sir.

Q And what was your departure time about?

A Well, we -- Well, it wasn't but a few minutes after 4:30. I'd say around 4:35, 4:40, we headed downstream.

Q We're interested in what occurred after getting in the vicinity of the towns of Darrow and Donaldsonville, below Baton Rouge. About what time were you in that area?

A About eight o'clock.

Q Do you remember the change of watch about 8 o'clock?

A I do.

Q And at 8 o'clock what personnel came on watch? Not their names, but their ratings?

A Well the quartermaster come on, the man on lookout and the third mate.

Q Where is the man on lookout stationed at about 8 o'clock?

A On the forecastle head, forward of the ship.

Q And where was the third mate?

A Third mate was on the bridge.

Q And where was the wheelsman, of course, at the wheel?

A At the wheel, yes, sir.

Q And approximately what was your position in the River near any landmark at 8 o'clock at the change of watch?

A Well, we were approaching the Donaldsonville Ferry which is at Donaldsonville, Louisiana.

Q What speed was the QUEMADO LAKE making?

A She was making approximately fourteen (14), fifteen (15) miles an hour.

Q Is that through the water or over the bottom?

A Over the bottom.

Q Over the bottom?

A Yes.

Q So what current were you favored with?

A Approximately a two (2) knot current.

Q You were making fourteen (14) to fifteen (15) miles an hour including the two mile current?

A No, no, no. Not including, just about fourteen (14) or fifteen (15) miles per hour with the current.

Q With the current?

A Yes, sir.

Q So that that is your over the bottom speed?

A Correct.

Q And in dead water, you would have been making about two miles per hour less. Is that what you mean?

A Approximately about twelve (12) miles per hour.

Q What were the conditions of visibility at about 8 P.M.?

A Well, it was a clear night. Dark, but it was clear. Visibility was clear. You could see approximately two (2) miles or better.

Q With the naked eye?

A With the eye, yes, sir.

Q Could navigation lights be seen at their maximum nighttime visibility?

A They could.

Q Was it in any way hazy or misty?

A No, it was not.

Q Any wind that affected navigation?

A No winds whatsoever, very little breeze.

Q Well, what did you do upon approaching the Ferry crossing between Donaldsonville and Darrow?

A I put the ship on half speed for approaching the ferry at Donaldsonville at approximately eight (8), five (5) past eight, something in that--

Q And how long did you remain on reduced speed?

A About five (5) minutes.

Q And then, what speed did you put her on?

A Put her back on full ahead.

Q Now, is that the same as full ahead that T-2 Tanker runs out on the outside if you know?

A No, sir, that's maneuvering speed. In other words, ---

Q Tell the court what you mean by "maneuvering speed".

A Well, that's river speed. In other words, that's the speed that they run in the Mississippi River.

Q And is that more or less than her full speed at sea?

A That's less. Less speed.

Q What was your course below the ferry crossing at Darrow?

A Well, I was heading down the left descending bank approaching Brangier Point.

Q And why were you heading down on the left descending bank?

A Because that's the channel in the River for deep draft vessels.

Q I show you the navigation maps of the Mississippi River prepared by the Corps of Engineers, U.S. Army and direct your attention to map number forty-eight (48) which I believe was entered in evidence by proctor for Libellant on behalf of his clients--

MR. LEMLE:

You've got forty-eight and forty-nine in there. We put both of them in.

BY MR. FARRELL:

Q This map has already been offered as Mr. Lemle's exhibit. Would you show Judge Christenberry whether or not this map shows the ocean vessel channel line below the Donaldsonville-Darrow Ferry?

A Yes, sir. Your channel runs from deep draft vessels--

Q Show him which is upstream, downstream and such.

A This is the upstream. This is downstream. In other words, your deep draft vessel come here down on the Donaldsonville Ferry and then proceed over the left descending bank which is Darrow, down the left descending bank--

Q Where is Brangier Point?

A Brangier Point is here.

Q I see. So that is what you meant when you said below the ferry landing you favored the left descending bank?

A That's right.

And that red line represents the channel line?

A That's the channel mark. That is the deep water.

That might clear up in your mind Mr. Lemle's statement before the trial about our favoring the left descending bank above Brangier Point. That's the only significance of this map.

THE COURT:

This map refers there to the "Sugar House Point".

THE WITNESS:

Well, it's also called "Sugar House Point" or "Brangier". It's the same thing.

BY MR. FARRELL:

The light is known as "Brangier Point Light" but the light is not on the point itself?

A That was just names that they used years ago.

THE COURT:

I just want it clarified.

MR. FARRELL:

Yes, sir.

THE COURT:

You're talking about the same thing.

BY MR. FARRELL:

Now what occurred when you were running the channel line between Darrow and Brangier Point on the left descending bank? What was your next order?

A Well, to come down the left descending bank and steady up down the left descending bank passing Brangier Point Light heading down on Rateau Light, which is--

Q Where is Rateau Light?

A Rateau Light is down in the bend.

Q On what side of the river?

A On the right descending bank.

Q Across the river from you?

A Across from Darrow Point--right across from Brangier Point.

Q And why did you change your heading to head on Rateau Light?

A Because that's the channel for deep draft vessels.

THE COURT:

What light did he say?

MR. FARRELL:

R-A-T-E-A-U.

THE COURT:

Rateau.

THE WITNESS:

We call it Rateau, some call it Rateau.

BY MR. FARRELL:

Q I refer you to map forty-eight (48) again and ask you to point out where Rateau Light is?

A Judge Christen, this is the light right here.

THE COURT:

Yes.

BY MR. FARRELL:

Q And would you indicate whether or not the channel line runs from the left descending bank across toward Rateau Light?

A That's right.

Is it so marked on the chart? In Red.

A That's right.

What is the purpose of the--strike that please.

THE COURT:

What are these circles; these red circles?

MR. FARRELL:

Shall I answer?

THE COURT:

Not if they're readible.

THE WITNESS:

I don't know what those marks mean on those red circles.

MR. LEMLE:

They mark the miles.

MR.FARRELL:

They mark the miles. You see, here's mile post 170, 72, 73.

THE COURT:

The reason I asked the question the question is that the red circle at Brangier Point is out in the middle of the River and the red line is over toward the east bank.

MR. FARRELL:

The red circle, sir, just marks the miles.

THE COURT:

They'd be of no significance.

MR. FARRELL:

They'd be of no significance.

THE COURT:

They don't mark the channels?

MR. FARRELL:

No, sir, they just mark the mile posts.

BY MR. FARRELL:

Q Would you tell us what is the normal way for a descending vessel such as the QUEMADO LAKE to run?

A Well, a descending vessel of the QUEMADO LAKE-- we favor the bend. All descending vessels favor the bend.

Q And on the course from the left-hand descending bank towards Rateau Light; is that a course designed for you to run the bend?

A It is.

Q What, if any, order did you give the helmsman when you left the left side of the river?

A Well, we headed down into Brangier Point--I mean down into the bend at Rateau and--

Q My question is what order did you give the helmsman?

A What orders --

Q Did you give the helmsman to do that?

A I gave him a left--an order for a left easy.

Q Left easy?

A Left easy rudder.

Q And that was made in order to do what?

A In order to fall down in the bend at Rateau Light.

Q When you first directed your heading across river, away from your left descending bank, what, if any, traffic was visible ahead?

A I seen a tow boat, a tow coming up in the reach from

Livingston Light up unto Rateau.

Q Now Captain, I'm talking now about the time when you first began to steer away from the left hand bank.

MR.LEMLE:

He answered the question if Your Honor please. Because the answer doesn't suit counsel is no reason for restating it.

THE COURT:

Let's hear what the question was.

The reporter repeated the question.

THE COURT:

Well, he has already answered it.

MR. FARRELL:

All right, sir.

BY MR. FARRELL:

Q Well, what was the position of your vessel in the river when you first saw the tow?

A I was leaving Brangier Point, about in the middle of the river.

Q What is the width of the river from bank to bank here?

A Approximately eighteen hundred (1800) to two thousand (2000) feet.

Q I show you an enlargement of sheet number thirty-one (31) of the Hydrographic Survey of the Corps of Engineer, 1949 to '52, which has also been identified in evidence by Libellant on which is imposed a scale of one (1) to ten thousand (10,000) and I think it can be stated that counsel agrees for our present purposes the scale is accurate.

MR. LEMLE:

Enough.

MR. FARRELL:

It's just a larger scale.

I also hand you two models which have been previously used by Libellant but which have now been cut down to fit this scale by agreement. Counsel has said we may use them for our present purposes. They are roughly to scale.

MR. LEMLE:

They're accurate enough.

Indicating the vessel and later on we'll use what is to be the tow boat, use first the model of the vessel and place its position when you first began to steer away from your left hand bank.

The witness placed the model.

Now, what was your intended course from that point?

Well, from Brangier Point Light, which is this light here, down to Riverton Light--in other words, when you're the descending vessel coming downstream, you favor this lane until passing Brangier Point Light, then widen out down in this reach here, heading down on Rateau Light.

You said Riverton awhile ago. Where is --

I mean Rateau Light.

Where is Riverton?

Riverton Light is over here. I'm sorry.

THE COURT:

Let me ask you this now at this point: Why would you be

over there at forty-four (44) foot water and be further out in the stream than sixty-one (61) and sixty (60) feet water?

THE WITNESS:

Because that's your channel down here. You have to come down the shore here. In other words, you come across from Donaldsonville, that's your channel, this channel up in here fills in.

BY MR. FARRELL:

Is that illustrated on the other map that we had referred to awhile ago?

A Yes, sir.

The red channel line?

THE COURT:

Of course that wouldn't explain it. That's no answer, I don't think. Why would you have to-- Merely because you had to favor the left bank doesn't mean you'd have to go that far over and get over the in the shallow low water when you're looking for depth.

THE WITNESS:

Well, it's not necessarily that we would be right down on the shoreline, Judge Christen. In other words, we would be maybe--say, three hundred feet off of this shore here coming down this bank here.

THE COURT:

Well now you've got it further out. Where were you? Where were you actually I mean?

THE WITNESS:

Coming down this bank here say three hundred feet off this bank here. You'll have a Darrow Light that sits--

THE COURT:

You head for the light?

THE WITNESS:

Yes, sir, you run light to light. That's the Coast Guard Lights. You have a Darrow Light here. You head down on the Darrow Light and then down this descending bank, left descending bank until approaching Brangier Point Light. When she is about abeam, then you start widening out, which the channel does widen out, down into the bend, down to Rateau Light here.

BY MR.FARRELL:

Q Now, you've placed your model approximately abeam Brangier Light. Is that correct?

A That's correct.

Q And is that where you widen out to your starboard?

A You start widening out here and fall down on this light here. In other words, come down this shore on this light.

Q Indicating the course to be run by the descending vessel?

A Correct.

Q Now, put the vessel at the position it was when you first saw any upboard traffic.

A Approximately here.

Q And how did your stem bear with respect to an imaginery line in the center of the river?

A About in the middle of the river.

Q And what did you see? What vessel did you see?

A I saw a tow coming up.

Q And was she lighted?

A Yes, sir. I could see a green light on the head of his tow.

Q And would you take a pencil then and point out on the chart where you saw this green light on the head of the tow?

A Approximately in here.

THE COURT:

Now what did you see over there?

THE WITNESS:

I saw a tow.

BY MR.FARRELL:

Q And what was the distance away?

A I'd say approximately a mile, maybe a mile and a quarter.

MR. FARRELL:

Don't mark the chart. Erase it.

Q What did you do?

A I sounded one blast.

Q What did that indicate?

A It indicated passing port to port.

Q And what did the tow do?

A The tow started swinging.

Q In what direction?

A Started swinging to the point.

Q In what direction is that of the tow?

A Started swinging to the right bank.

Q To the tow's right?

A To the right ascending bank. The left descending bank or the right ascending bank.

THE COURT:

The east bank?

THE WITNESS:

Well, the east bank.

BY MR. FARRELL:

Q The right ascending or the east bank?

A Yes.

Q That is to the starboard of the tow?

A Correct.

Q And how could you tell she was swinging?

A Because I could see the amber light on the head of his tow starting to open up and I could also see his red light starting to show on his tow.

Q His red light began to show?

A His red light began to show. I could tell he was swinging.

Q And where is the red light located on the head of the tow?

A On the port bow.

Q And the starboard light on the head of the tow is where?

A On the starboard.

Q And the amber light?

A The amber light is in the center of his tow.

Q Now, which side of the river is the ascending vessel, the upbound vessel, required to take?

R. LEMLE:

I object to that. That's a question of law.

R.FARRELL:

This is a pilot on the river.

R. LEMLE:

Not "required to take".

THE COURT:

Well, let's see what his understanding of it is. I think that's the best way.

R. LEMLE:

OKAy.

THE WITNESS:

Well, it has always been the rule that the descending vessel takes the bend and the ascending vessel favors the point.

BY MR. FARRELL:

So what did your one blast indicate with regard to that rule?

It indicated that I would take the bend and he would take the point.

After you began--After you saw the tow begin to swing did you continue on the heading as the model shows toward Rateau Light?

Yes, sir, we were in about the middle of the river and started swinging on an easy left wheel, falling down into the bend at Rateau Light.

Now let me ask you this. We've only talked now about the head of the tow. At what point did you see the tow boat herself?

A Well, have you a model? I can show you better with a model.

Q Yes. I wanted you to describe what you saw first and then we can use the model.

A Well, I saw a tow coming up favoring the bend.

Q I'm talking now about a tow boat.

A A tow boat.

THE COURT:

Well, let's see what he saw first. Did you see the lights on the tow boat first or the lights or the barge?

THE WITNESS:

No, the lights on the head of the tow.

THE COURT:

All right.

BY MR. FARRELL:

Q How soon thereafter did you see any other lights?

A Well then, after, maybe a few seconds later, I picked his lights up on his towboat, picked the green light up.

Q Only the green the first time?

A Only the green.

Q And --when was it that you blew the one blast passing signal?

A When within about a mile apart.

Q And what was in view? What lights were in view at the time you blew the one blast passing signal?

A His green light on his tow and the green light on the towboat.

Q And what occurred after you blew the one blast passing signal?

A Well, I noticed that his tow starting swinging towards the point.

Q And how could you tell this?

A Because I could see his lights opening up. His amber light started opening up and the green light on the head of the tow, also the towboat started opening up.

THE COURT:

Did he answer your blast?

THE WITNESS:

I did not hear it answered but I could tell that it was agreed by the way he was swinging his tow.

BY MR. FARRELL:

Q And after the lights swung, what other lights became visible, if any?

A His red light on the head of his tow and the amber light on the tow and also the red light on the towboat itself.

Q Would you continue to show us the track of the QUEMADO LAKE by using the model?

A Well, we continued on down this shore with an "easy left rudder" coming down into the bend. About this distance off.

Q Now, may I go back for a moment and ask you to use this model which has been used before and is now reduced to scale to fit this map-31, indicating the tow being pushed ahead--I'll remove both models for the chart and ask you to start over again and show us the position of the towboat when it and its barges

ahead were first seen.

A Its position was about here.

Q And the QUEMADO LAKE's position?

A The QUEMADO LAKE's position was about here.

Q And would you show us the relative movements of both vessels?

THE COURT:

You mean that's when you first saw them?

THE WITNESS:

That's when I first saw him. When I first saw his green light, was in this position.

THE COURT:

I was under the impression before that you put it back here somewhere.

THE WITNESS:

When he said passing, he said what position I was when I was passing Brangier Point Light.

THE COURT:

Oh, I see, all right.

THE WITNESS:

But when I first sighted him I was in this -- crossing over here, about in this position here.

THE COURT:

That's right, about half way between the two lights.

THE WITNESS:

About half way between Brangier Point and Rateau Light.

BY MR. FARRELL:

Q Now, does this indicate the position of the vessels when you blew one blast, captain?

A That's right.

Q Proceed with the track of both vessels thereafter.

MR. LEMLE:

Your Honor, can't we mark some of these positions?

MR. FARRELL:

I'm going to get to that later.

MR. LEMLE:

I know but if we get back to them later, the positions change. He has had them in four different places already. Let's mark these positions.

MR. FARRELL:

He hasn't had them in four different places.

THE WITNESS:

Your Honor, he asked me when I was passing Brangier Point--

THE COURT:

The note I made was, when he saw the tow he was about mid-river between Brangier Point and Rateau.

MR. FARRELL:

That's where the model is at the present moment, your Honor

THE COURT:

I was wrong when I suggested--

MR. LEMLE:

I suggest the model is not in the middle of the river. It's well favoring this bank.

MR. FARRELL:

Well the stem is and I asked him about the position of the stem. Diagonally he has a five-hundred and twenty-five foot ship. That's the stem.

MR. LEMLE:

I still ask the question if we can mark the--

THE COURT:

I don't know why we can't mark it as we go along.

MR.FARRELL:

All right, Your Honor. I think I could take him through the collision first and then--

THE COURT:

All right, that's all right. I'm not going to suggest how you should do it. Go ahead.

BY MR. FARRELL:

Q Would you show us what happened after the one blast signal when the tow then began to swing, captain, moving both ships relative to one and the other?

A This pencil here--When one whistle was blew, I noticed the towboat starting to swing. The ship was continuing on down. It was swinging--in other words, he was swinging for the point. I was continuing on down in this position here.

Q Making what speed?

A My ship was making approximately fourteen (14) miles per hour.

Q And what was the tow doing then?

A He was swinging. In other words, he was swinging for the

point.

Q Continue.

A I continued on down on Rateau Light into the bend with a left easy rudder and continued to swing. He was swinging it slow, in this position here.

Q What if anything should have been done?

A I didn't get that question. Just what do you mean by "what--

Q This towboat that you have swinging into the bend.

A. He should have--he should be continuing on across the river. In other words, he should be--he should swing for the point. I'm coming down here for the bend.

Q All right, continue with your story, captain.

A Well, when I -- when I come across the head of his tow he had about three hundred feet of clearance--plenty of clearance. It was wide--plenty wide enough for us and it was agreed--I mean, we passed on a one whistle port to port passing and he continued to swing. When I got down on Rateau Light--down into the bend, I noticed the stern of his towboat closing in into the bend which was closing the gap where I had to go through. So then, I put my ship on stop, continued to come down, then the ship was down in the bend so far that she was "sluggish steering" so there was nothing else for me to do but put her full ahead and give her a right rudder to keep her down on to the bend as much as possible. She was sluggish, she wouldn't steer. So his tow, the towboat continued to swing. I cleared all of his tows by a --had plenty of clearance on the tow all the way

until we got down into the bend. His stern continued to swing. I went down in the bend as far as I could get. I couldn't get any further down in the bend on account of the bank. She was rubbing the bank.

Q Was the bank visible--the mud of the bank?

A Well, you could see the trees. You could see the trees off of--off the starboard side of us. You were right down into the trees. And he continues to swing. We cleared until--his stern kept a swinging. When I seen that she was going to hit, that's when I put her full ahead again. I mean when she started steering bad, I put her full ahead again and held her on a steady course but his stern kept a swinging and sweeping me down into the bend, kept crowding me. There was nothing else to do but to slide down this bank.

Q Well, how did the collision occur?

A Because he kept crowding me in the bend. I couldn't do nothing else.

Q Would you illustrate?

A From the looks of his boat all he was on was on pivot. He wasn't even shoving his tow. He was just swinging.

Q Well, would you put the two vessels in their respective positions at the time of collision, using the models?

A Just about in this position here.

THE COURT:

Why did you say you went full speed ahead?

THE WITNESS:

I stopped her when I seen him closing into the bend to

the stern. In other words, he was moving into the bend. I stopped but I was down into the bend so far that she was steering bad, she wouldn't answer to her rudder. In other words, she started coming over to the left a little, so I put her hard right and then I stopped her and then when I continued on down here I seen where she started coming out again so I put her full ahead.

THE COURT:

Now what did you expect to accomplish by that? Where did you expect to pass?

THE WITNESS:

I continued down on into the bend. I expected to pass in the bend where I am supposed to have passed.

THE COURT:

You mean you expected to get through the gap before it closed?

A Well, in a way, yes, I expected to clear the gap before it closed up. He continued to swing. But seems to me that he wasn't even moving because the tow was too large for him. I mean he couldn't shove his tow because all he was doing was pivoting. In other words, he was just swinging. He wasn't moving in the water whatsoever, he was just swinging.

BY MR. FARRELL:

Well, let's go back a moment. The judge is interested in this engine order "full ahead".

HE COURT:

Yes, why didn't you go in the reverse instead of full head?

HE WITNESS:

Judge, if I would have went into reverse, the whole ship oddily would have fell down on it and probably cost loss of ives or something else. With the current--the current would ave caught her, she would have fell down on it and--.

Y MR. FARRELL:

Now it's seventy-five feet off the right hand bank down nto the bend. Now, let's go back with your story before you ave full ahead. What was the position of your vessel as re- ards this tow when you gave stop to the engine?

We were down in this--I was down in here, coming down this ight bank in this position here.

How much of his tow had you passed when you gave stop.

I was about, say middleways his tow--five hundred feet of is tow.

And what was the reason you stopped your engines?

I stopped the engines because he continued to swing. His tern continued to close in in the bank.

And what was the position of your rudder at the time you topped engines?

I had her on about two to three degrees left rudder.

And what happened after you stopped engines?

She had started acting sluggish. She started coming away rom the bank.

Q What caused that?

A Well, because she was too close down into the bend. She was crowding me into the bend. There was nothing else I could do.

Q What else did you do?

A I put her full ahead and give her a hard right rudder.

Q Now, getting back to the judge's question,---

THE COURT:

What was the reason you gave her full ahead? That's my question. The ship, you say, would fall down on the tow if you put her in reverse?

THE WITNESS:

Yes, sir.

THE COURT:

Would that result be greater on a stop?-- If you had stood still and you had not move at all. Did she fall down more when the engine was not in reverse than when it was standing still?

THE WITNESS:

Yes,but, Judge, if you would back her--if you would back a loaded vessel like that, then her stern would fall out. She would back away from the bank and her stern would fall out and fall on top of him. In other words,--

THE COURT:

What I can't understand is why it would fall on him more--faster--with the engines in reverse than it did with the engines in operation.

THE WITNESS:

Yeah, but when--if she is just stopped in the water, she'll continue to steer as long as she is in deep enough water, where she can steer at but once you back her and she starts her way-wash--in other words, backing, her wheels start turning and she is backing, she is going to--eventually the current is going to pick up her stern and throw her down on top of it.

THE COURT:

Wouldn't that depend on what sort of rudder you had?

THE WITNESS:

No, sir, the rudder doesn't help out at all when you're backing.

BY MR. FARRELL:

Q Let me ask you this on that point: when you stopped engines you say you got sluggish?

A Yes, sir.

Q Has that got to do with your steerageway?

A Yes, sir.

Q What about your steerageway when you stopped the engines, what happend?

A Well, she would not answer to her rudder. She started coming out from the bank.

Q So what was the purpose of your "full ahead" after your steerageway had left you? Why "full ahead"?

A I put her full ahead to keep her from going into the tow and to steady her up down the bank.

Q So as I understand your testimony, your "full ahead" was

to get back your steerageway?

A That's right, my steerageway. That's correct.

MR. FARRELL:

That's the point we're trying to clarify, Your Honor; what he meant by "sluggish". I don't think we quite understood what he meant by that.

THE COURT:

It's a very common connotation.

BY MR. FARRELL:

Q All right, let me ask you: how soon after this stop bell did you put her back to "full ahead"?

A I'd say between twenty and thirty seconds.

Q And what rudder order did you give at the time of your "full ahead"?

A I had her on midships and I put her hard right and then back to midships.

Q And what was the effect of that "full ahead" and "hard right"?

A She stopped the swing--she stopped the bow of the ship from coming out from the bank. In other words, trying to avoid from hitting him, maybe hitting midships the towboat or something.

Q How could you tell that it stopped you from doing that? How could you tell that it stopped you from coming out from the bank as you put it?

A Because when I put her "full ahead", I noticed the ship steadied up.

Q And how did she lay with regard to the right bank?

A She layed down parallel with the bank.

THE COURT:

You say that she was aground--that she was scraping the bottom?

THE WITNESS:

No, she was not aground but she was rubbing the bank. You could feel her rubbing.

THE COURT:

All right.

BY MR. FARRELL:

Q How could you tell that you had steadied up parallel to the bank, captain?

A Because I could see the bank. I mean I could see the shoreline. We were going down the shoreline.

Q How much time before collision was it that you steadied up?

A Oh, I'd say half a minute.

THE COURT:

I can't understand your statement that the rudder has no--does not control the movement in reverse.

THE WITNESS:

It does not, sir. It does not control it whatsoever.

THE COURT:

You mean if you put the engine in reverse, you just have no idea--you have no idea where it is going to go?

THE WITNESS:

If you put her in reverse--any seagoing vessel will back

her stern to the port--the majority of them. I don't say any of them. Some of them have a different screw, different way, but the majority of them all will back to the port.

BY MR. FARRELL:

Q Is this a right hand screw or a left hand screw?

A I don't know what kind of screw it is but I mean--

Q Well, why do you say it backs to the port? You have in mind a particular kind of propeller, haven't you?

A Yes, sir, I've handled many of them, many T-2s I have handled and they've all backed to port.

Q Well, how does any oceangoing single screw vessel react when going astern if she is propelled by a right hand screw? How do that back? Isn't that a commonly known thing?

A She'll back to the left.

Q Isn't that commonly known?

A Yes.

Q And can the position of the rudder affect that?

A No, the rudder does not affect it whatsoever.

Q All right, sir, you said that about thirty (30) seconds before collision you steadied up parallel to the bank. Then what happened?

A Then the stern of the NEW ORLEANS continued swinging down on the bow of me--not on the bow but right off the port side of me.

Q Did the boat herself clear you?

A The whole boat cleared. Everything cleared but the stern, the port stern hit.

Q About how long is that towboat NEW ORLEANS?

A About nearly two hundred and some odd feet--two hundred and twenty-five feet.

Q And how long was her tow of barges?

A About a thousand feet.

Q Then what happened with this port stern of the NEW ORLEANS?

A She swung in, swung down and hit about seventy-five to a hundred feet astern of the bow--aft of the bow I mean. In other words, she hit--she cleared the bow and hit down on the port side, around, say, about eighty feet.

Q The port astern of the NEW ORLEANS struck the port bow of the QUEMADO LAKE?

A Not the bow, no, sir. The port side.

Q About seventy-five feet from the bow?

A That's right. About seventy-five feet from the bow.

Q And then describe what happened?

A And then, when she hit, I put my--I put the QUEMADO LAKE hard left to keep him from dragging down and going under the stern of the QUEMADO LAKE.

Q How many feet inboard from the port side of the barges would you say the stern of the NEW ORLEANS is? Do you follow me? You say you were hit by the port stern and you say you cleared her tow and all of the boat except the port stern.

A Well, she would be made up in the middle part of her tow and if she had three barges wide, she'd be at least thirty five feet inward from the outboard corner of the barge.

Q And after this first impact with her port stern, what happened?

A I put the QUEMADO LAKE "hard left" to keep him from getting any further or falling under the stern of the QUEMADO LAKE. Then he just continued to swing and all I can say he hit me--he was down in the bend too far. He just had me jammed in the bend and there was nothing else I could do.

Q Well, how many times thereafter did he hit you, after this first time?

A One or two times. I don't know, it skipped and hit.

Q And how far back was the furthest point of collision from this first point of impact?

A I'd say back, maybe a hundred feet from the stern or a hundred and fifty--maybe a hundred and fifty feet from the stern.

Q Captain, would you draw an outline of these, showing us first, the position of both vessels when you blew the one blast, secondly, their position at the moment of impact. Bring them together ever so slightly to show the angle of impact. Now you can start backwards or forwards, however you wish. Just take your time.

A You want me to draw it on--

Q Yes.

A Sketch it on this?

Q Yes. Just take your time.

A This map here? (The witness drew diagrams on the map.) That's when I first sighted her in this position here.

Q Well, is that relatively the same position when the whistle was blown?

A When the whistle was blown, yes; sir. When the whistle blown.

Q Because you said you first saw the barges and then a second or so later you blew the whistle, when you saw the tow. So was this the position when the whistle was blown?

A When I first saw him, yes. When the whistle was blown, no. He was up a little bit higher.

MR. LEMLE:

If Your Honor please,

THE WITNESS:

-- in this position here.

MR. LEMLE:

I think my friend here is leading his witness too much. The witness has said twice that that was the position when the whistle was blown and now he is lead to say something different.

THE WITNESS:

When I first saw him this was the position of him, right here.

BY MR. FARRELL:

Q Well, how soon after you saw him was the whistle blown?

MR. LEMLE:

Your Honor, I don't think it makes much difference because as I understood the testimony of the witness, the whistle was blown--

THE WITNESS:

I'd say a minute after I first seen him. He wouldn't move that much. I mean he may move a half a length of his tow.

BY MR. FARRELL:

Q Well, show us the angle of collision by using the two models. Draw an outline.

(The witness drew on the map.)

THE COURT:

Of course, I naturally have in mind that both vessels were moving at all times, so after he saw it--he said before the bow of his vessel was about the middle of the river and about midway between Brangier and Rateau. The tow was on the west bank.

BY MR. FARRELL:

Q Now how far below Rateau Light was the scene of collision? Approximately?

A Approximately a quarter of a mile. Maybe a little--about a quarter of a mile.

Q Now Captain, unless the judge wants a question or so about our diagrams--

THE COURT:

The witness can resume his chair.

The witness resumed the witness chair.

BY MR. FARRELL:

Q How far off your portside was the head of the tow of the NEW ORLEANS when the head of the tow and your stem first began to pass one another?

A About three hundred feet.

Q And at that moment what was the approximate distance that the towboat NEW ORLEANS was from the head of your bow?

A I don't get that. You mean the boat itself?

Q The boat itself.

A How far away was he from--

Q Your bow.

A From my bow?

Q As you cleared the head of his tow.

A Well, his tow was--say, a thousand feet so I would say he was thirteen hundred feet or better away from me.

THE COURT:

I didn't get that. I didn't understand it.

THE WITNESS:

He said the towboat.

THE COURT:

What was the bow--thirteen hundred feet away from?

THE WITNESS:

From the towboat. Not the tows, judge. In other words, the tow is about--was about a thousand feet, I imagine.

THE COURT:

I see.

MR. FARRELL:

This is at the time that the bows began to overlap at an interval of about three hundred feet, Your Honor.

THE COURT:

I see. I understand.

BY MR. FARRELL:

Q Now when you stopped your engines, how far forward of your bow was the stern of the NEW ORLEANS?

A Oh, I'd say--between six and seven hundred feet.

Q Could you have avoided the collision at that time by dropping your anchor?

A No, sir.

Q What would have occurred had you dropped one or both of your anchors?

A If I dropped one or both anchors the stern, with the current, would have threw the stern down on top of the whole tow. In other words, it would have threw the stern broadside his tow and towboat and all.

Q Now what was the reason for your stopping engines?

A To see if he would--could push out the way or either open up and give me enough room to get through.

Q Suppose, instead of stopping engines you would have kicked your ship full speed astern at that time. What would have happened?

A It would have threw the ship down on top of the tow and towboat and all.

Q Why do you say that, captain?

A Because she was--when you put her full astern, with the current in the river and her backing, she will back to the port. The ships will back to the port. She would have thrown her stern down on top of him because the current--the current on the stern of it would have carried the stern down on top of him and probably did more damage than what was done.

Q Getting back to the chart, what is the normal course that an ascending vessel steers when above Riverton Light? Will you show the court that?

The witness withdrew from the witness stand.

Q Point out Rivington Light and show us what the proper course for-

A Rivington Light is here.

Q -- an ascending vessel.

THE COURT:

He said that they favor the point.

MR. FARRELL:

Yes, sir, but I want to tie this in with the preceding testimony of the captain of the other vesel, sir, because he answered this same question in a particular way.

THE COURT:

All right.

THE WITNESS:

Well when up on--when you come up on Rivington Light, then you shape up on Rivington Light and head down on Rateau Light, which is a course -- a course about like this but you don't-- we don't never wait until we're up to that light before widening out.

BY MR.FARRELL:

Q What is the purpose of widening out?

A Widening out to--in case there is any descending vessel coming down. In other words, when we are about half way between Rivington Light and Rateau Light, we widen out for the point.

Q Would you illustrate that by using the model and running that course and showing the court how the tract should be run?

A Yes,sir. From Rivington Light to Rateau we'll run this.

course on this course here and then, when you're getting near the point you'll start her widening out here for the point.

THE COURT:

Now let me ask you a question. Why is it then that when you're coming down the river and where you're supposed to favor the bend, why is it that you wait until after you've passed Rateau Light--Now, you've made this light--

MR. FARRELL:

Brangier Light.

THE COURT:

Brangier Light. Why did you wait until after you had passed Brangier Light to shape up for this bend.

THE WITNESS:

With a loaded tanker drawing thirty-one feet, we have to stay from light to light but a towboat--the most they draw is nine feet, maybe ten feet, eleven at the most, they can run--they can run all down in here. They can run all up in here but we can't, not with a loaded ship. You see you have twenty-four feet here, twenty, eighteen feet, seventeen feet. They can run down the middle of the river here with ten feet but we can't. We have to come down in the channel where there is deep water. It's the same way as here, he can run all this shore here as far as this.

BY MR. FARRELL:

How much water--

THE COURT:

In other words, if you had shaped up sooner than you did,

you would have gotten into shallow water

THE WITNESS:

Shallow water, yes, sir.

BY MR. FARRELL:

Q How much water is there, say at a point six hundred feet off the point itself?

A Six hundred feet off the point? There's plenty of water. There's maybe thirty, thirty-one, thirty-two feet of water. Maybe better than that.

Q According to the chart there is better than that. You had better take a look at it, sir.

THE COURT:

Do you see it on the chart?

THE WITNESS:

Well, I don't know what the scale is from the bank to the--

THE COURT:

I see.

THE WITNESS:

--to here but there's thirty-one feet, thirty, thirty-one, thirty-two, thirty-five, thirty-one, forty eight, sixty seven--plenty of water up in here.

MR. FARRELL:

That's it.

THE COURT:

Take the stand.

The witness resumed the witness stand.

MR. FARRELL:

All right, sir, answer Mr. Lemle.

THE WITNESS:

Yes, sir.

MR. FARRELL:

I want to mark this for identification at this time, Mr. Lemle. I ask the reporter to mark the map-31, Esso-Trosclair-1 please and we might as well put in the models--together with the models pasted thereto, we offer it in evidence.

Answer Mr. Lemle's questions.

CROSS EXAMINATION

BY MR. LEMLE:

Q Captain, let's talk a little bit about your experience.

A Yes, sir.

Q When was it that you got your license,--

A I got my license--

Q to--

THE COURT:

Wait a minute, let him finish.

Q Your license from north of Norco to Baton Rouge?

A I got my license in March.

Q Do you have it on you?

A No, I don't have it on me.

Q I asked you that, captain, because when you testified before the Coast Guard, you told the Coast Guard that you received that license on the 5th of June, 1952.

A 5th of June? No, sir. No, sir, it's written on my license, March--on the 8th day of March.

Q You're sure now?

A I'm sure.

Q So that the transcript of the Coast Guard testimony you say is incorrect?

A Well, it must be if I made that statement I made it wrong because I got my license on the 8th of March. Not a license; an extension, Your Honor. An extension.

MR. FARRELL:

What year is this?

MR. LEMLE:

'52.

THE WITNESS:

My license was got--

THE COURT:

You started to say your license was gotten when?

THE WITNESS:

My first issue of license were in '39 or '40. That was my first issue of license. My extension was got in March.

MR. FARRELL:

If Your Honor pleases--counsel, my copy on page 2, question number four distinctly says, "I also got an extension from Norco to Baton Rouge in March of this year."

MR. LEMLE:

Oh, I see what you mean. I accept that. It's further down.

THE COURT:

All right.

BY MR.LEMLE:

Q All right, when did you commence piloting with the Upper Mississippi River Association?

A In June.

Q June the 5th?

A 5th of June, yes, sir.

Q All right, I'm sorry, captain, I misread.

A Okay, thank you.

Q So it was the 5th of June when you started piloting with the Association?

A That's right.

Q And this collision happened on the 20th of June?

A Correct.

Q You've been piloting with the Association then fifteen (15) days when the collision occurred?

A Correctly.

Q Is this the first dee-draft tanker that you brought down past the point where the collision occurred?

A No, sir. No, sir. We handle on an average from twelve (12) to fifteen(15) ships a month, so I'd say I handled at least eight (8) ships in that period.

Q In those fifteen (15) days, you handled eight (8) ships?

A Correctly.

Q Now,captain, did you see--did you know that that towboat was down in the bend before you actually saw it?

A No, I didn't.

Q Did you see him flashing his searchlight on the bank before you saw him?

A I did not. I did not.

Q Did the lookout report to you that he saw a boat down in the bend flashing its searchlight?

A He did not.

Q Did the officer on the bridge tell you that he had seen a boat?

A He did not.

Q So that the first you knew was when you actually saw it?

A When I saw his green light show. That's the first I knew that he was coming.

Q And how far apart were you then?

A Well, I was coming down on Brangier Point when I seen him about the middle part--about the middle of the river heading down on Rateau Light.

THE COURT:

Let me ask you this: did you have a lookout?

THE WITNESS:

Yes, sir, there was a lookout on the bow of the QUEMADO LAKE.

BY MR. LEMLE:

Q What was he supposed to report?

A He was supposed to report approaching tows when he sees the tow.

Q Did he ever report this tow?

A Yes, sir, when he seen it, he reported the tow coming.

Q But you saw it before he did?

A Well, I don't know if I could say I seen it before he did or not.

THE COURT:

Well, I thought you said that the first you knew about this tow was when you saw the lights yourself?

THE WITNESS:

When I saw the lights, yes, sir, but he had--he had reported the tow. He was upon the bow which is, I'd say two hundred feet further up than I am-- from the bridge--from the bridge of the ship to the bow of the ship is about two hundred or better feet.

THE COURT:

But you don't know which of you saw it first?

THE WITNESS:

No, I don't.

THE COURT:

All right, go ahead.

BY MR. LEMLE:

How far was it from the bow of your vessel to the bow of the tow when you first saw the tow?

A I'd say a mile.

Q And--And, did you --Is that what you told the Coast Guard how far apart you were when you saw him?

A Well, I imagine it is just about that, whatchamacallem, I may have told the Coast Guard a mile and a half.

Q You may have told them a half a mile?

A I don't know. I don't remember what--what statement was given but it was between a mile and a half--between a mile, I'd say a mile at the best.

Q I read you, Captain, the Coast Guard testimony:

"Question: Approximately how far was the bow of your vessel from the head of the NEW ORLEANS tow?"

"Answer: - I would say within a half mile when I first sighted him."

Q Did you say that, captain?

A Well, if I said it--I don't think--I guess I did say it, yeah, but I mean, I was further than that.

Q If you were further than that, why did you tell him a half mile?

A Well,--probably--it was between a half a mile and a mile at the best I can figure.

Q And that's when you blew the--

A When I blew one blast, yes, sir.

Q And why did you blow one blast?

A To pass port-to-port.

Q And what is the Pilot Rule as to who blows the first blast?

A The descending vessel.

Q I beg your pardon?

A The ascending vessel.

Q The ascending vessel?

A The ascending vessel, yes, sir.

Q Why did you blow the first blast?

A Because he didn't--there was no signals passed and the Coast Guard says we're supposed to blow a signal regardless. We blow signals.

Q You do say that, captain?

A We blow signals, yes, sir, because half of them don't even answer signals in the towboats. When you blow them they don't even answer you.

Q Well, what does the rule say? There must be a rule, isn't there?

A As a rule it says that the ascending vessel should blow first and if the descending vessel sees improper fit to pass, then he shall blow, give him a danger signal and blow what passage signals he wants. But half of your towboats don't blow whistles on the river.

Q What does the rest of the rule say, captain?

A I didn't get that.

Q What does the balance of that rule say? Are you familiar with the rules, captain?

A Sure I'm familiar with the rules.

Q Well, let me refresh your memory. The rule says this: "The pilot of the descending vessel shall not blow the first signal, except that if the other vessel has not signaled when the steam vessels, or the forward end of their tows, if being pushed ahead, are within one half mile of each other, he shall blow the first danger signal, which shall be promptly answered by a danger signal by the ascending vessel;--". You want to read the rest of the rule?

A Well, I understand from--

MR. FARRELL:

No, that's all right.

THE WITNESS:

Well, I understand from sources that after Captain C[illegible]y did say he blew a signal. He blew a passing signal, which I didn't hear it though.

BY MR. LEMLE:

Q But so far as you were aware, it had not been blown, and you were, nevertheless, blowing the first signal?

A Well, when I blew a signal--yes, sir, I blew a signal and he started widening out to pass a port-to-port passage but I understood that he did blow a signal. Of course the NEW ORLEANS has a whistle on it that if you're in a half a mile you can't even hear it.

Q But anyhow, you didn't hear it?

A I didn't hear it, no.

Q And then you blew a passing signal, one blast?

A Correctly.

Q Now, according to the testimony, the diagram that you have drawn, when you blew that one blast the bow of your vessel was in the middle of the river?

A Correctly.

Q And the towboat NEW ORLEANS and her tow, I'll refer to it as a flotilla--the NEW ORLEANS and her flotilla--

A The NEW ORLEANS and her full tow?

Q I beg your pardon?

A You say the NEW ORLEANS and her full tow?

Q Yes. They were how far then off the right descending bank? Your right hand bank?

A My right hand bank, they were-- they were right down in the bank. I'd say they weren't--weren't a hundred and fifty feet off the bank.

Q Nevertheless, you, at that time, made up your mind that you were going to cross their bow and go down in the bend. Is that right?

A Because he was swinging. I could see his tow swinging because his red light became visible to me and I could see he was swinging.

Q Nevertheless captain, if you'll answer the question I think we'll get along faster.

A Yes.

Q You decided to cross his bow?

A Well, I was down in the middle of the river. I don't see how I could cross his bow. I was well off of him, within three hundred feet.

MR. FARRELL:

Your Honor, I'm going to enter an objection to this kind of testimony because the pleadings of the NEW ORLEANS, the libel that was filed, says that the pilot of the NEW ORLEANS blew a blast for a port-to-port passing. This passing signal was immediately answered by the QUEMADO LAKE. So that what Mr. Lemle's witness proposed to do, this witness did and now Mr. Lemle is being critical about it. It has nothing to do with the

issues in this case, Your Honor, and I don't think it's proper examination. He is bound by his pleadings. He has alleged that it was a port-to-port passing agreement which was initiated by him.

R. LEMLE:

What do you allege in your cross-libel, Mr. Farrell?

MR. FARRELL:

Just what this witness said; that he blew one blast for a port-to-port passing and he didn't get a --he didn't get a --

THE COURT:

I overrule the objection. Let's get on.

BY MR.LEMLE:

Q So in that position, captain, I reiterate, you determined to cross his bow and go down between the NEW ORLEANS and your right hand bank. Is that correct?

A Correctly.

Q When you crossed his bow, how far upstream was the left hand or port side of the QUEMADO LAKE from the head of his tow?

A I'd say three hundred feet.

Q So that in that position, you couldn't stop because if you had the current would have carried you down into him. That's right, isn't it?

A Yes, sir, if I'd have stopped, I'd have fell on top the whole tow, or either he'd have run into me.

Q Isn't that a violation of the rules to cross the bow of another vessel in that position?

A Which other way could I go? I mean, there was no other way to go, I mean, as the rule says, yes, you've not supposed

to cross the bow of a vessel but it was understood and from the way that he was swinging his tow we're were understood to make a pass-- a port-to-port passage.

Q What does the rule say, captain?

A It says no vessel is supposed to cross the bow of another vessel unless it is understood with proper signals.

Q Does it say that?

A Well, sure it says that.

Q Let me refresh your memory, captain. I'll read you the rule. "The pilot of an ascending steam vessel shall in no case attempt to cross the river when an ascending or descending steam vessel shall be so near that it would be possible for a collision to ensue therefrom; and conversely, the pilot of a descending steam vessel shall in no case attempt to cross the river when an ascending or descending steam vessell shall be so near it would be possible for a collision to ensue therefrom." So, on the face of that rule, you crossed his bow within three hundred feet?

A The descending vessel--

MR. FARRELL:

I object to that paraphrasing of the witness' testimony. He didn't say he crossed his bow at three hundred feet.

THE COURT:

He knows what he said. He is under cross examination.

MR. LEMLE:

If Your Honor please, I don't think my cross-examination ought to be broken up this way.

THE COURT:

Let's get on.

THE COURT:

Did you understand the question?

MR. LEMLE:

It's all right, he can answer it. It's apparent from his testimony. He has been interrupted now so let it go.

BY MR. LEMLE:

Q Now captain, let's get back to the question of speed. What speed--You said, I understood, that you were making fourteen miles?

A Yeah, fourteen miles through the water--over the bottom.

Q I beg your pardon?

A Fourteen miles over the bottom, yeah, on the river. In other words, through the water, with the two knot current.

Q So that's twelve (12) miles plus a two (2) knot current?

A That's right, yes, sir.

Q Your ship was making twelve miles through--

A Through the water, yes.

Q With a two knot current?

A That's right.

Q And you say that she was running on reduced speed?

A We were running on maneuvering speed.

Q Do you know how many revolutions that is?

A How many revolutions is that?

Q Well, I'm asking you. Do you know how many revolutions you were making?

A Yes, from eighty to eighty two revolutions.

Q You were making from eighty to eighty two revolutions?

A Correctly.

Q So that if the engine room bell book says that at 7:17--you went to 90 revolutions on orders from the bridge, nobody told you that?

A At 7:17?

Q That's right. I'm asking you do you know that at 7:17 the engine room increased speed to 90 revolutions on order from the bridge?

A Well, I don't know who was ever getting any 90 revolutions.

Q So that if you were getting 90 revolutions and the engine room bell book shows it, you didn't know it?

A I guess I would have known it if we were getting ninety revolutions. I'd have known it by another way.

THE COURT:

How would you have known it?

THE WITNESS:

I'd know it by the indicator up in the wheel house.

BY MR. LEMLE:

Q Do you know what mile White Castle Light is?

A No, I don't know the mile of White Castle Light. It's thirty-eight (38) miles below Baton Rouge. Below the Standard Oil Docks in Baton Rouge. I imagine it would be around 198.

Q According to the light book, White Castle Light is 193.4.

A 193.4.

Q Do you know what mile the collision took place at?

A The number of the light?

Q Do you know what mile the collision took place at?

A The collision took place at mile one--about 178.

Q 173, wasn't it, captain?

A Or 173.

Q So if the collision took place at 173, according to the bell book, the deck bell book, you passed White Castle Light at 7:08 P.M. and the collision took place at 8:19 P.M., so that's 20.4 miles, captain, in one hour and eleven minutes. That's at the rate of 17.23 miles an hour?

A Yes, sir, but your lights on the river--if there's a light here, on this point and there's a light across the river here, that light may be 173 there and 172 over here. It's a mile across that river but it's not a mile in distance coming down the river.

Q Well, you ran across the river from light to light, didn't you?

A That's right, but what about--you have other bends in the river besides--I mean, that light there, your lights--you say your light is--well, what's the number of your light at White Castle?

Q At White Castle? White Castle is 193.4.

A 183.4.

Q Yes.

A Well, you have a lot of bends to make between White Castle and Brangier Point.

Q Well, the more bends you make, the further you go, don't you, captain?

A Yes, sir, but yc lights are governed from one bank to the other. It's not governed down in a straight reach of the river.

Q So what you're telling me is that you went further because you were crossing the river and recrossing the river?

A No, I didn't go further.

Q You went more miles than the light book shows. Is that right?

THE COURT:

No, he says he went fewer miles.

THE WITNESS:

Fewer miles, that's right.

THE COURT:

Because he didn't go--Isn't this mileage measured from light to light?

THE WITNESS:

Yes, sir, it's measured from light to light.

THE COURT:

Or down the middle of the channel? Do you know?

THE WITNESS:

It's measured from light to light.

THE COURT:

I see. All right, go ahead.

BY MR. LEITE:

Q What is measured from light to light?

A Your miles.

Q Do you know that mileage is measured smack up the river, captain?

A How is it measured right up the middle of the river?

Q How is it measured?

A Yes.

Q I don't know, I'm no engineer, captain.

A I was always under the indication, and I've been on the river since 1935, that it's measured from light to light, Mr. Lemle.

Q Well, you ran from light to light, didn't you?

A In places, yes, from light to light, yes, sir.

Q So you went at least--you went at least 20.4 miles from White Castle Light to the point of the collision?

A I wouldn't say we run that far. We wasn't making that speed there. We was making a speed of maybe fifteen miles per hour.

THE COURT:

Let me see that book over there.

The clerk of the court handed a book to the court.

Q Now captain, how far did you say the NEW ORLEANS was off the left bank when you first saw him?

A I'd say he was between two-hundred--between a hundred and fifty and two-hundred feet off the right descending bank.

Q And approaching--

A Rateau.

Q And approaching Rateau Light?

A Approaching Rateau Light, yes, sir.

Q You knew he had to turn before he got to Rateau Light?

A It's always the rule that before you get to the point, you widen--you widen out into the middle of the river and favor the

point to come around with all towboats.

Q But from the positi[redacted] you say you saw him, you knew he couldn't keep straigh[redacted]ad or he would have run aground at Rateau Light. Isn't that right?

A He wouldn't have run aground at Rateau Light. He was too close in the bend there. He was favoring the bend where he should have been favoring the point.

Q I understand that, captain. I understand that. He was not favoring the point. Let's leave that.

THE COURT:

Let me ask you the question: when you first saw him over there on the right descending bank, that is, the west bank--

THE WITNESS:

Yes, sir.

THE COURT:

Did you know then that he was in an improper place?

THE WITNESS:

Yes, sir.

THE COURT:

A place where he had no business being?

THE WITNESS:

Yes, sir.

THE COURT:

I see. Go ahead.

BY MR.LEMLE:

Q So you knew he had to turn out from there, he couldn't keep up on a straight course. He had to turn to his right?

A Correctly.

Q Well, when you knew that he would turn to his right, your stern was bound to go to the left, was that right?

A His stern, yes, sir. He had to swing for the point, his stern had to go for the left.

Q So you knew that his stern was bound, as you put it, to close the gap that you were trying to come down through?

A That's right.

Q And with that knowledge, you tried for it?

A Because I had plenty of room for it. But from the looks of it, he wasn't moving his tow. He was standing in one position and he was pivoting. He was not moving. If he was moving his tow, if his engines would have kept going at all times--he was pivoting, he had too big a tow to handle. That's all I could say about it. He was overloaded.

Q That's what you think?

A That's what I think.

Q. How many horsepower is in the NEW ORLEANS?

A Well, I don't know what horsepower she's got but she used to have two thousand (2,000). That's all she had unless they renewed the engines and put new engines in her.

Q Now you say that you had plenty of room? You say that she was within a hundred and fifty feet of the bank and you were coming down and going to make that passage in a hundred and fifty feet. Is that right?

A Yes, sir.

Q And you consider that plenty of room?

A Sure it's plenty enough room. That's plenty of room to get through if he wouldn't have swung. If he'd have kept on a steady course after we had passed we would have cleared each other.

Q All right, but don't let's-- A hundred and fifty feet, in your opinion, is all you need to pass?

A Well no, you need more room than that to pass, sure you do, sure you need more room than that to pass. You've got to figure the draft of the ship. I was seventy-five feet off the right descending bank. I got a ship seventy-eight feet wide.

Q Well, captain, it gets down to this; is a hundred and fifty feet enough or isn't it enough for you to pass?

A Well, it's not enough for me to pass.

Q All right, then it's not enough to pass?

A No.

Q And you knew he was a hundred and fifty feet off the bank and you tried to pass?

A Not until I got down into the bend where I could see the position of him.

Q Now captain, after this collision occurred, where did your vessel go?

A I went down oposite Riverton Light--right above Rivington Light and rounded up and come back up and anchored off Brangier Point Light.

Q You went down how far?

A I went down approximately three-quarters of a mile.

Q On which side of the river?

A On which side of the river?

Q Yes, which side of the river.

A Well, you got to fall down in the bend at Rivington with a deep ship to get rounded up. You can't round up in the middle of the river. You got to fall down and some around.

Q Well, the question is, where did you go down; on your left bank or your right bank or across the river?

A I proceeded down the right bank and crossed over onto the left bank at Riverton Light and rounded up above Rivington Light.

Q And how did you round; to your right or to your left?

A I come around my right helm.

Q You came around on the right helm?

A Yes,sir, because she'll back to port.

Q You came around on the right helm? How did you get over on the left bank?

A What do you mean, "I come around--I didn't get that question..

Q Well, if you came around to the right, you must have been on the left bank before you started. You can't come around to the right if you're on the right bank, can you, captain?

A I just told you thatI come down and favored down to Rivington Light which was down in the next bend and come around on the right helm.

Q Captai.. is it your practice to slow down from "full ahead" to "half ahead" when you pass a tow?

A Depending what size tow they are, yes, sir. If they're

small towboats, we usually slow down.

Q But if they're big towboats you don't slow down?

A No, we don't slow down unless she is making tremendous wave wash, which she don't.

Unless who is making a tremendous wave wash?

The ship.

So you didn't think it was worthwhile slowing down for this tow?

I didn't get that.

Q You did not consider it proper to slow down for this tow?

A No. If we had plenty of room--it looked like we had plenty of room, looked like he was swinging clear and everything else, we had plenty of room to pass.

Q In a hundred and fifty feet, going full speed ahead, you don't think your wavewash would have broken his tow up?

A When I got down into the bend then I seen what the situation was in the bend. He was swinging and he continued to fall into the bend but when I was passing ahead of his tow we had plenty enough room.

Q As a matter of fact, captain, had you not on that night slowed down for every tow you passed?

A Every small tow, yes, sir.

Q That's all you passed, small tows?

A Small tows, yes, sir.

Q All of them were small tows?

A To my knowledge, all of them was small. What we call small boats is tug boats towing a barge alongside of her. And ferry boats. We mark ferry boats on there too. They mark it

as tows.

MR. LEMLE:

I believe that's all.

THE COURT:

Are you still piloting?

THE WITNESS:

Yes, sir.

THE COURT:

Still a member of the Association?

THE WITNESS:

Yes, sir.

MR. FARRELL:

Okay, that's all, Captain.

THE COURT:

Step down.

MR. FARRELL:

That's all, Captain.

The witness withdrew from the witness stand.

MR. FARRELL:

Your Honor, our agreement at the pretrial was that we would submit memoranda and oral argument after the case was in and then we have this graph to study this afternoon as a possible further point--

THE COURT:

You can just notify me when you're ready and we'll put it down. In the meantime, I'll read these depositions.

MR. LEMLE:

If Your Honor please, may I withdraw this large chart to

work with on the graph?

THE COURT:

Yes, I see no objection to that.

MR. FARRELL:

No, sir, I think that all of us will have to withdraw certain of the exhibits to help us write memorandums.

MR. LEMLE:

I should think if we could withdraw those for the time being--if we could withdraw what we filed this morning, with the exception of the note of evidence, it would be very helpful.

THE COURT:

Including the transcript of the depositions?

MR. LEMLE:

Yes, sir, leaving on file the note of evidence so--

THE COURT:

Very well. That will identify what has to be returned.

MR. FARRELL:

I'll leave in the note of evidence and the stipulation.

THE COURT:

All right, let it be withdrawn.

THE COURT:

Gentlemen, are you ready to produce further testimony with respect to those--

MR. FARRELL:

Charts. I doubt if there will be further testimony. There might be a stipulation.

MR. LEMLE:

Well, it depends on how far we get this afternoon. It may be now that it's read, I think that --in fact, I wish I were doing it myself. I think that the course can be pretty well plotted.

THE COURT:

I see.

MR. FARRELL:

Well, they must have done it with mirrors.

MR. GREENE:

Mr. Lemle and I had studied that graph independantly of each other and couldn't make heads or tails of it.

THE COURT:

I think you gentlemen have conceded that you're not experts in that field.

MR. LEMLE:

I want to say this--

MR. FARRELL:

We've done a number of them, sir.

MR. LEMLE:

Several experts couldn't read it until I went--I understand he is the top man at Sperry, Grissold.

MR. GREENE:

That's funny, I gave it to Mr. Grisswold two years ago and he said he couldn't read it.

MR. LEMLE:

Nobody else could read it until it got to Mr. Grisswald and he read it and--

MR. GREENE:

He is a better man than I am.

MR. FARRELL:

I'll tell you this, sir, the lawyers can read them better than the ships' officers--

MR. GREENE:

Grisswald is good. I'll concede that regardless of what he says though I'm not going to agree with--

THE COURT:

Well, see what you can work out, gentlemen and let me know when you're ready. Stand at recess.

The court recessed at 12:11 P.M., March 14, 1955.

o-o-o-o-o

REPORTER'S CERTIFICATE

The undersigned certifies, in his capacity of Official Court Reporter for the United States District Court, Eastern District of Louisiana, the foregoing to be a true and correct transcript of his Stenomask records taken during the proceedings in the above numbered and entitled case on the 14th day of March, 1955.

New Orleans, Louisiana, this 25th day of March, 1955.

s/ Francis J. Judge
Francis J. Judge
Official U.S. Court Reporter

...ooCoo...

ARGUMENT AND SUBMISSION

Minute Entry November 3, 1955 Christenberry, J:
(Number and title omitted)

This cause came on this day for argument.

Present: Selim Lemle, Esq.,
Proctor for Libellant;

Alfred Farrell, Esq.
Proctor for Claimant;

After hearing argument of counsel for the respective parties the matter was submitted when the Court took time to consider.

...ooOoo...

INTERLOCUTORY DECREE

Minute Entry March 31, 1956 Christenberry, J:
(Number and title omitted)

This cause came on for trial at a former day on the pleadings, evidence and testimony offered on behalf of the respective parties and after hearing argument of counsel the matter was submitted, when the Court took time to consider;

Now, on due consideration thereof;

IT IS ORDERED AND ADJUDGED by the Court that judgment be and is hereby entered herein, decreeing this to be a case of mutual fault, with damages to be divided.

H.W.C.

...ooOoo...

NOTICE OF APPEAL

(Number and title omitted) (Filed: April 13, 1956)

SIRS:

Please take notice that Mississippi Valley Barge Line

Company, Libellant, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the interlocutory decree of this Court entered herein on the 31st day of March, 1956.

New Orleans, Louisiana, April 12, 1956.

LEMLE & KELLEHER

BY:S/ Selim B. Lemle
Proctors for Mississippi Valley Barge Line Company
1836 National Bank of Commerce Building
New Orleans, Louisiana

...ooQoo...

ASSIGNMENTS OF ERROR

(Number and title omitted) (Filed: April 13, 1956)

1. The Court erred in concluding that the Towboat NEW ORLEANS was at fault.

2. The Court erred in failing to conclude that the Tanker QUEMADO LAKE was solely at fault for the collision.

3. The Court erred in failing to conclude that any fault on the part of the Towboat NEW ORLEANS was a condition and not the cause of the collision, or that such fault was minor as compared to that of the Tanker QUEMADO LAKE and therefore to be excused under the "Major-Minor Fault Rule."

New Orleans, Louisiana, April 12, 1956.

LEMLE & KELLEHER

BY:S/ Selim B. Lemle
Proctors for Mississippi Valley Barge Line Company
1836 National Bank of Commerce Bldg.
NewOrleans 12, Louisiana

...ooOoo...

BOND FOR COSTS ON APPEAL

(Number and title omitted) (Filed: April 13, 1956)

KNOW ALL MEN BY THESE PRESENTS:

That Mississippi Valley Barge Line Company, principal, and St, Paul Mercury Indemnity Company, surety, are held and firmly bound unto Esso Standard Oil Company in the above entitled actionin the sum of TWO HUNDRED FIFTY AND NO/100 ($250.00) DOLLARS to be paid to the said party,its successors and assigns for which payment well and truly to be made the said Mississippi Valley Barge Line Company, principal, andSt. Paul Mercury Indemnity Company, surety, bind themselves, their successors and assigns, firmly by these presents.

Sealed with our seals and dated this 12th day of April, 1956.

The condition of the above obligation is such that, whereas the said Mississippi Valey Barge Line Company are about to take an appeal to the United States Court of Appeals for the Fifth Circuit in the above numbered and entitled matter to amend and partially reverse a certain interlocutory decree entered by this Court on March 31, 1956.

Now, therefore, the condition of the above obligation is such that if the said Mississippi Valley Barge Line Company shall prosecute its appeal to effect, and answer all costs which may be adjudged against it for failure to make good its appeal, then this obligation shall be void; otherwise to remain in full force and effect.

MISSISSIPPI VALLEY BARGE LINE COMPANY

BY: LEMLE& KELLEHER

BY:S/ Selim B. Lemle
Attorneys

ST. PAUL MERCURY INDEMNITY COMPANY

BY: S/ J. R. Myers
Attorney-in-Fact

(S E A L)

...ooOoo...

DESIGNATION OF RECORD

(Number and title omitted) (Filed: April 13, 1956)

Mississippi Valley Barge Line Company for purposes of the appeal taken herein by it to the United States Court of Appeals for the Fifth Circuit does hereby designate the entire record to be included in the transcript of appeal.

New Orleans, Louisiana, April 12, 1956.

LEMLE & KELLEHER

BY: S/ Selim B. Lemle
Proctors for Mississippi Valley
Barge Line Company
1836 National Bank ofCommerce Bldg.
New Orleans 12, Louisiana

...ooOoo...

NOTICE OF CROSS APPEAL

(Number and title omitted) (Filed: April 16, 1956)

SIRS:

Please take notice that Esso Shipping Company, claimant of the S.S. QUEMADO LAKE, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the interlocutory decree of this Court entered herein on the 31st day of March,

1956.

New Orleans, Louisiana, April 16, 1956.

TERRIBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Alfred M. Farrell, Jr., Proctors for
Esso Shipping Company
825 Whitney Bank Building
New Orleans 12, Louisiana

...ooOco...

BOND FOR COSTS ON APPEAL

(Number and title omitted) (Filed: April 16, 1956)

KNOW ALL MEN BY THESE PRESENTS, That we Esso Shipping Company as principal and American Surety Company of New York as surety, are held and firmly bound for the benefit of whom it may concern in the sum of TWO HUNDRED FIFTY AND NO/100 ($250.00) DOLLARS, to which payment we bind ourselves, our heirs, executors, and administrators, jointly and severaly by these presents.

Sealed with our seals and dated April 16, 1956.

WHEREAS in the United States District Court for the Eastern District of Louisiana entitled "Mississippi Valley Barge Line Company vs. S.S. QUEMADO LAKE, her engines, tackle, apparel, furniture, etc.," No. 2229 in Admiralty, an Interlocutory Decree was entered on March 31, 1956, and Esso Shipping Company having filed a Notice of Appeal on April 16, 1956 from the aforesaid Interlocutory Decree to the United States Court of Appeals for the Fifth Circuit;

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that if the said Esso Shipping Company shall prosecute this appeal to its conclusion and pay all costs and expenses which shall be

awarded against them by the Appellate Court, then the above obligation is to be void; otherwise to remain in full force and effect.

ESSO SHIPPING COMPANY

BY: TERRIBERRY, YOUNG, RAULT & CARROLL

BY:S/ Alfred M. Farrell, Jr.
Alfred M.Farrell, Jr.
Its Proctors

AMERICAN SURETY COMPANY OF NEW YORK

BY:S/ Thomas F. McMahon
Thomas F. McMahon
Attorney-in-Fact

(SEAL)

...ooOoo...

ASSIGNMENT OF ERRORS

(Number and title omitted) (Filed: April 16, 1956)

1. The Court erred in concluding that the tanker QUEMADO LAKE was at fault.

2. The Court erred in failing to conclude that the TOWBOAT NEW ORLEANS was solely at fault for the collision.

3. The Court erred in failing to conclude that any fault on the part of the tanker QUEMADO LAKE was a condition and not the cause of the collision, or that such fault was minor as compared to that of the towboat NEW ORLEANS and therefore to be excused under the "Major-Minor Fault Rule."

New Orleans, Louisiana, April 16, 1956.

TERRIBERRY, YOUNG, RAULT & CARROLL

BY:S/ Alfred M. Farrell, Jr.
Alfred M. Farrell, Jr., Proctors for
Esso Shipping Company-825 Whitney Bldg.
New Orleans 12, Louisiana

STIPULATION

(Number and title omitted) (Filed: May 14, 1956)

WHEREAS, in various stipulations entered into between Proctors for Esso Shipping Company and Proctors for Mississippi Valley Barge Line Company on the trial of this cause in the United States District Court, inadvertently Esso Shipping Company was referred to as Esso Standard Oil Company,

NOW, THEREFORE, to correct this error,

IT IS AGREED by and between Messrs. Terriberry, Young Rault & Carroll, Proctors for Esso Shipping Company, and Lemle & Kelleher, Proctors for Mississippi Valley Barge Line Company, that wherever "Esso Standard Oil Company" appears in any stipulation entered into on the trial of this cause in the United States District Court, "Esso Shipping Company" should be substituted therefor, and the Clerk is hereby empowered and requested make this change in preparing the transcript of the record for the United States Court of Appeal for the Fifth Circuit.

TERRIBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Proctors for Esso Shipping Company
and the Tanker QUEMADO LAKE.

LEMLE & KELLEHER

BY:S/ Selim B. Lemle
Proctors for Mississippi Valley Barge
Line Company and the M/V NEW ORLEANS

...ooOoo...

MOTION AND ORDER TO SEND ORIGINAL EXHIBITS TO UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

(Number and title omitted). (Filed: May 28, 1956)

On joint motion of Mississippi Valley Barge Line Company, appellant, through its proctors of record, Lemle & Kellehr, and Esso Shipping Company, cross-appellant, through its proctors of record, Terriberry, Young, Rault & Carroll, and on suggestion to the Court that it is impracticable to copy or reproduce certain exhibits on file herein and that such exhibits should be sent to the United States Court of Appeals for the Fifth Circuit in the original as part of the transcript of appeal:

IT IS ORDERED BY THE COURT that the following exhibits on file herein be transmitted to the United States Court of Appeals for the Fifth Circuit in the original as a part of the transcript on the record of appeal:

1. CLAY 1, being tow diagram of M/V NEW ORLEANS' tow;
2. CLAY 2, being aerial chart marked by Clay;
3. CLAY 3, being Map No. 48, 20th Edition, Flood Control and Navigation, United States Engineers
4. CLAY 3a, being Map No. 49, 20th Edition, Flood Control and Navigation, United States Engineers;
5. CLAY 4, being photostat (both sides) of "Report of Accident Involving Damage to Boats, Barge or Property" to Mississippi Valley Barge Line Company;
6. CLAY 5, being log sheet of M/V NEW ORLEANS;
7. Six Charts, identified and drawn on by Jack Burress.

being charts 26 to 31, inclusive, of the United States Engineers Charts of the Mississippi River;

8. QUEMADO LAKE-NEW ORLEANS--A, being a photograph of the graph of the Sperry Gyroscopic Compass course recorder on the SS QUEMADO LAKE for June 20, 1952.

9. ESSO TROSCLAIR #1, being a chart drawn on by Trosclair and identified as Chart No. 31 of United States Engineers Charts of the Mississippi River.

10. STANDARD EXHIBIT C, being photocopy of engineer's bell book of SS QUEMADO LAKE of June 20, 1952 (two pages).

11. EXHIBIT #1, being photocopy of rough bridge log of SS QUEMADO LAKE for June 20, 1952 (two pages).

12. STANDARD OIL EXHIBIT B, being extract of bridge bell book of SS QUEMADO LAKE for June 20, 1952.

13. STANDARD OIL EXHIBIT B-1, being photocopy of original bell book of SS QUEMADO LAKE for June 20, 1952.

S/ Herbert W. Christenberry
United States District Judge

New Orleans, Louisiana, May 28, 1956.

Approved:

LEMLE & KELLEHER

BY: Selim B. Lemle
Proctors for Mississippi Valley BargeLine Company

KIRLIN, CAMPBELL & KEATING

TERRIBERRY, YOUNG, RAULT & CARROLL

BY: S/ Alfred M. Farrell, Jr.
Proctors for Esso Shipping Company

...ooOoo...

CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN,JR., Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify the foregoing 273 pages to contain a true and correct copy of the record in the case entitled MISSISSIPPI VALLEY BARGE LINE COMPANY -versus- ESSO SHIPPING COMPANY, Claimant of the SS QUEMADO LAKE" No. 2229 of the Admiralty Docket of this Court, as made up in accordance with the Designation of Contents copied herein.

(S E A L
O F
C O U R T)

WITNESS my hand and the seal of said Court at the City of New Orleans Louisiana, this 6th day of July, A.D., 1956.

A. DALLAM O'BRIEN, JR., CLERK

BY: _____
Deputy Clerk

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SUPPLEMENTAL TRANSCRIPT OF RECORD

UNITED STATES

COURT OF APPEALS

FIFTH CIRCUIT

NO. 16,202

MISSISSIPPI VALLEY BARGE LINE COMPANY

Appellant

versus

ESSO SHIPPING COMPANY, claimant of the SS QUEMADO LAKE

Appellee

Appeal from the United States District Court for the Eastern District of Louisiana

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(SUPPLEMENTAL RECORD RECEIVED)

U.S. Court of Appeals

FILED

NOV 20 1956

John A. Feehan, Jr.
Clerk

EXHIBIT QUEMADO LAKE-NEW ORLEANS B

SPERRY GYROSCOPE COMPANY

Division of the Sperry Corporation

Freat Neck, New York

March 7, 1955

MARINE DIVISION
GARDEN CITY, N.Y.
PIoneer 2-4400

Mr. George B. Matthews
Lemle & Kelleher
National Bank of Commerce Building
New Orleans, Louisiana

Re: Collission between S/S QUEMADO LAKE and NEW ORLEANS

Dear Mr. Matthews:

Following is an interpretation of photostat of course recorder marked "Hugo R. Jenner, July 2, 1952, Recorded tracing at time of collision 20th June 1952", said to be the recorder from the S/S QUEMADO LAKE. All times are those of the recorder and are P.M. Headings are those of the recorder.

Due to the fact that the quadrant pen was not functioning properly, it is necessary to trace the headings of the vessel from the time it was abeam Bayou Goula in order to establish the proper quadrant the vessel was in during its transit down the river.

7:18	On third quadrant heading 240° approaching bend at Bayou Goula
7:19-7:38	Rounding Bayou Goula swinging left
7:38	On heading 044° off Alhambra
7:38-7:47	Altered right slowly to 049°
7:47-8:10	Commenced swing to right at Carville
8:10	Steady on heading 158° off Geismar
8:10-8:17	Steady on 158°
8:17	Commenced swing to right off Philadelphia Point
8:24	Steady on 242°
8:26	Altered to 245° approaching bend at 8 Mile Point

8:27	Commenced swing to left rounding 8 Mile Point
8:33	Steady on 95° off Smoke Bend
8:35	Altered to 92°
8:42	Altered right to 108°
8:42-8:47	Steady on 108°
8:47	Commenced swing to left rounding Sugar House Point
8:47-8:53	Swinging left
8:53	Steady on 340°, altered right to 344°
8:53½	on 344°, altered left to 339°
8:54	On 339°, commenced swing to right
8:54-9:13	Swinging right
9:13	On 239°, altered left
9:19	Steady on 190°

In the swing to the left around Sugar House Point, the vessel did not steady on a heading until it reached 340°, although the true heading for the short stretch of the river between Sugar House Point and Marchandville is approximately North. It is impossible to determine from the recording the exact time of impact.

Very truly yours,

SPERRY GYROSCOPE COMPANY
Division of the Sperry Corporation

s/ W. R. Griswold
W. R. Griswold

WRG: nmg
Encls: (A) USA Engineer's Chart of Mississippi River
(B) Photostat of Course Recorder of the S/S QUEMADO LAKE
(C) Photostat of Bell Book of QUEMADO LAKE dated June 20, 1952
(D) Aerial photograph of Sugar House Point Bend
(E) Mississippi Valley Barge Line Company's Letter dated February 23, 1955

cc: Mr. W. Barta
Mississippi Valley Barge Line Company
Front and Harriet Streets
Cincinnati 3, Ohio

...ooOoo...

COPY OF LETTER TO CLERK OF COURT

(Filed: April 10, 1956)

Law Offices of
LEMLE & KELLEHER
National Bank of Commerce Building
New Orleans 12

April 10, 1956

Honorable A. Dallam O'Brien, Clerk
United States District Court
Eastern District of Louisiana
Post Office Building
New Orleans, Louisiana

Re: Mississippi Valley Barge Line Company vs. S.S. QUEMADO LAKE, her engine, tackle, apparel, furniture, etc.
No. 2229 In Admiralty
Our File: 95Q6-89

Dear Sir:

Pursuant to Rule 2(d) of the Rules of the United States District Court for the Eastern District of Louisiana, I attach proposed Findings of Fact and Conclusions of Law drafted in accordance with the decree of the Court holding mutual fault and dividing the damages.

Very truly yours,

s/ Selim B. Lemle
Selim B. Lemle

SBL: mw
encl.
cc: Alfred M. Farrell, Jr., Esquire
(With two copies of the proposed Findings of Fact and Conclusions of law)

...ooOoo...

FINDINGS OF FACT AND CONCLUSIONS OF LAW

(Number and Title Omitted) (Filed: November 10, 1956)

Christenberry, J:

The libel in this action arose out of a collision

between the towboat NEW ORLEANS and the SS QUEMADO LAKE, which the libel alleges was caused solely by the fault of the latter vessel. Respondent answered and cross-libelled, admitting the collision, but alleging that it was caused by the sole fault of the towboat NEW ORLEANS.

The case came on for trial on the issue of liability only, and the Court, having considered the pleadings, the evidence adduced, the arguments of counsel, and the law applicable, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

At all times material hereto, Mississippi Valley Barge Line Company was and now is a corporation organized under the laws of the State of Delaware.

II.

At all times material hereto, Esso Shipping Company was and now is a corporation organized under the laws of the State of Delaware.

III.

At all times material hereto, Mississippi Valley Barge Line Company was the owner and operator of the Towboat NEW ORLEANS, a twin screw vessel propelled by two diesel engines of approximately 3600 indicated horsepower, and the engines are pilot house controlled. The vessel is 213 feet in length overall, 43 feet wide, and its full depth approximately 10 feet. She has two steering rudders located aft of her propellers, used for steering when going ahead, and two backing rudders

located forward of her propellers, used for steering when going astern.

IV.

At all times material hereto, Esso Shipping Company was the operator of the QUEMADO LAKE, an American tank steamship, single screw, 526 feet long.

V.

On the night of June 20, 1956, the NEW ORLEANS was shoving ahead a tow of 17 barges in five tiers. The overall length of this tow was 872 feet, and its width was 105 feet at the widest point. The combined length of the towboat and tow was 1087 feet. Captain Roy Clay, an old experienced river pilot, was in charge of her navigation.

VI.

On the same date, the QUEMADO LAKE was loaded and drawing 30 feet forward and 31 feet 10 inches aft, or a mean draft of 30 feet 11 inches. Captain Carlton F. Trosclair, licensed as a Master First Class Pilot on the Mississippi River in the area of the collision, was in charge of the QUEMADO LAKE.

VII.

On the night of June 20, 1956, at about 9:15 P.M. (Time shown by the NEW ORLEANS' clock), the NEW ORLEANS was in collision with the QUEMADO LAKE at approximately mile 172.5 a.h.p. (above the head of the passes). The night was dark but visibility was otherwise unimparied by weather factors. Both vessels were properly showing all lights. The River was about 1800 feet wide at the point of collision.

VIII.

The NEW ORLEANS was proceeding upstream from Crescent Light at Mile 146.8 a.h.p., at an average rate of speed of 9.8 m.p.h. over the bottom. When the NEW ORLEANS and her tow reached Riverton Light at Mile 171.2 a.h.p., on the left descending bank of the River, it was favoring that bank. Captain Clay then laid a course toward the right descending bank of the River, which placed Riverton Light 50 yards on his port stern and Rateau Light, on the right descending bank at Mile 173.0 a.h.p., 50 yards on his port bow, and which if continued to the right descending bank of the River would have brought the head of the NEW ORLEANS flotilla to that bank 50 yards upstream from Rateau Light. He intended to turn to his starboard, after passing the center of the River, and steering upstream past Brangier Point, on the left descending bank of the River. While on this course and approximately midway between Riverton Light and Rateau Light, Captain Clay, for the first time, became aware of the presence of the QUEMADO LAKE, when that vessel, downbound and on the left descending bank of the River above Brangier Point, emerged from behind the Point so as to be visible to a vessel below the Point. At this time the NEW ORLEANS and her tow were about 500 feet from the right descending bank.

IX.

Earlier, the QUEMADO LAKE had departed Baton Rouge, travelling downstream, and passed Plaquemine Light at Mile 208.3 a.h.p. From that light until she reached White Castle Light at Mile 198.4, the vessel was averaging 15.4 m.p.h. over

the bottom, and her wheel was turning at 80 to 82 revolutions per minute, at full speed ahead. At 7:17 P.M., on orders from the bridge, the wheel was increased to 90 r.p.m., and from White Castle Light to the point of collision she was averaging 17.23 m.p.h. over the bottom. As the vessel passed the Donaldsonville Ferry crossing, a few miles above Brangier Point, her speed was reduced, but it was increased to full speed ahead again as it approached Brangier Point. From Brangier Point on the left descending bank of the River, a course was laid to Rateau Light on the right descending bank of the River in order to follow the channel for deep draft vessels, which course then proceeded downstream on the bend side of the River. As the beam of the vessel was in the center of the River, approaching Rateau Light, the Pilot first noticed the green light on the head of the tow of the NEW ORLEANS. A few seconds later the Pilot noticed the green light on the towboat.

X.

The NEW ORLEANS blew one long whistle, as die the QUEMADO LAKE almost simultaneously, indicating a port to port passing. The distance between the QUEMADO LAKE and the head of the tow at that time was less than one mile. Immediately the NEW ORLEANS was swung to starboard for about 15 seconds in an attempt to allow ample passing room on her port for the QUEMADO LAKE, and was put back on center or perhaps 5 degrees to port so as to steady up the NEW ORLEANS flotilla. When the NEW ORLEANS turned its tow to starboard the stern of the towboat necessarily "crabbed" to the left in the direction of the right descending bank and the course of the QUEMADO LAKE from Rateau

Light. Meanwhile, the QUEMADO LAKE, moving toward Rateau Light, crossed the head of the NEW ORLEANS and her tow 100 yards up-river from it, approached practically into the mud on the right descending bank, which caused her to sheer to the left and toward the center of the River. Furthermore, the vessel was steered to hard left at this time in order to leave the bank. About 30 seconds thereafter, the port side of the QUEMADO LAKE struck the port side of the NEW ORLEANS' stern while the vessels were in the bend side of the River.

XI.

The speed of the NEW ORLEANS was never diminished during the above events. The QUEMADO LAKE was run full ahead at all times, except, when the vessel was in the right descending bank, the engines were stopped but almost immediately put full ahead again because the QUEMADO LAKE would not then answer to her helm.

CONCLUSIONS OF LAW

I.

The subject matter of this litigation, a marine collision, is within the admiralty and maritime jurisdiction of the Court. 28 U.S.C., 1333.

II.

Navigation of the waters wherein this collision occurred is governed by the "Pilot Rules for the Western Rivers and the Red River of the North".

III.

The QUEMADO LAKE was at fault in:

(a) Proceeding at too high a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the NEW ORLEANS flotilla without reducing speed;

(b) negligently navigating too close to the right descending bank, which caused the QUEMADO LAKE to smell the bank and to take a sheer to its left or alternatively, oversteering to the left, by reason of which the QUEMADO LAKE did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the River and struck the NEW ORLEANS;

(c) not navigating in a manner so as not to embarrass the Towboat NEW ORLEANS, which was encumbered with a large and heavy tow. The Mayumba (D.C.N.Y. 1884) 21 F. 476, The Rose Culkin (D.C.N.Y. 1892) 52 F. 328, The Lucy (C.C.A. 4, 1896) 74 F. 572, The Georgetown (Va. 1905) 135 F. 854; The Whitehall (D.C. Va. 1899) 153 F. 1010. The Maine (D.C. Ore. 1924) 2 F. 2d 605, Cf. Intgatiata vs. Ship Owners and Masters Towboat Company (Cal. 1955) 1946 A.M.C. 263;

(d) continuing to go full speed ahead in the jaws of collision and not going full astern. The New York (1888) 175 U.S.187, 20 S. Ct. 67.

IV.

There is a custom on the Mississippi River of such long standing as to have the force of law that up-bound vessels proceed up under the point and down-bound vessels proceed down in the bend. The Stephen R. Jones (5 C.C.A.) 27 F. 2d 208; The Norne (5 C.C.A.) 59 F. 2d 145. The NEW ORLEANS flotilla violated this rule by corssing the center line of the River onto the bend side, and therefore carries the burden of showing that this violation not only did not but could not have caused the collision. The Pennsylvania, 19 Wall. 125, 86 U.S. 125, 22 L. Ed.148. This burden the NEW ORLEANS has not successfully discharged.

V.

For the reasons above given, I find that this

collision occurred through the mutual fault of the tanker QUEMADO LAKE and the steamer NEW ORLEANS, and that the damage resulting therefrom should be divided between them. Interest shall run from the date of the final decree fixing damages.

New Orleans, Louisiana, November 9th, 1956.

s/ Herbert W. Christenberry
UNITED STATES DISTRICT JUDGE

...ooOoo...

CLERK'S CERTIFICATE

I, A. DALLAM O'BRIEN, JR., Clerk of the United States District Court for the Eastern District of Louisiana, do hereby certify the foregoing 10 pages to contain a true and correct copy of the Supplemental Record in the case entitled "MISSISSIPPI VALLEY BARGE LINE CO. -versus- SS QUEMADO LAKE, ETC." No. 2229 of the Admiralty Docket of this Court.

(SEAL OF COURT)

WITNESS my hand and the seal of the said Court at the City of New Orleans Louisiana, this 20th day of November, A.D., 1956.

A. DALLAM O'BRIEN, JR., CLERK

BY: _____
DEPUTY CLERK

* * * *
* * *
* *
*

That thereafter the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz:-

ARGUMENT AND SUBMISSION.

Extract from the Minutes of December 6, 1956.

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellant & Appellee,

No. 16202. versus

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE,
Appellee & Appellant.

(AND REVERSE TITLE)

On this day this cause was called, and after argument by Selim B. Lemle, Esq., for appellant & appellee, and Alfred M. Farrell, Jr., Esq., for appellee & appellant, was submitted to the Court.

* * * *

OPINION OF THE COURT FILED:-

February 13, 1957.

In The
United States Court of Appeals
For The Fifth Circuit

No. 16202

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellant,

versus

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE,
Appellee.

(AND REVERSE TITLE)

Appeals from the United States District Court for the Eastern District of Louisiana.

(February 13, 1957.)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: This is a suit in admiralty, growing out of a collision on the Mississippi River between ascending and descending vessels, a tanker and a

flotilla of barges propelled by a tug. The collision occurred in a bend of the river, and the trial judge found that the descending vessel, in spite of the danger, came on down the river without slackening its speed and, at or before the moment of collision, put its engines into full speed ahead, when it should have put them into reverse. From a holding that both vessels were at fault and that the damages should be divided, both sides have appealed, and the controversy here is waged upon the contention of each side that the other was solely to blame. Into the equation the doctrine of major and minor fault is also introduced.

The accident occurred on the night of June 20th, 1952, and the ascending vessel was the tug New Orleans, which was shoving ahead a tow of 17 barges in five tiers. The overall length of this tow was 872 feet, and its width was 105 feet at the widest point. The combined length of the tow and towboat was 1087 feet. The descending vessel was the Quemado Lake, which was loaded and drawing 30 feet forward and 31 feet 10 inches aft, or a mean draft of 30 feet 11 inches. The hour was about 9:15 P. M. The night was dark, but visibility was otherwise unimpaired by weather factors. Both vessels were properly showing all lights. The Quemado Lake was travelling downstream and averaging 17.23 miles per hour over the bottom. Navigation of the waters wherein this collision occurred is governed by the "Pilot Rules for the Western Rivers and the Rel River of the North."

The lower court held that the Quemado Lake was at fault in (a) proceeding at too high a rate of speed for a deep draft vessel in restricted waters and endeavoring to

pass the New Orleans flotilla without reducing speed; (b) negligently navigating too close to the right descending bank, which caused the Quemado to smell the bank and to take a sheer to its left or alternatively, oversteering to the left, by reason of which the Quemado Lake did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the river and struck the New Orleans; (c) not navigating in a manner so as not to embarrass the towboat New Orleans, which was encumbered with a large and heavy tow; citing The Mayumba, 21 Fed. 476; The Rose Culkin, 52 Fed. 328; The Lucy, 74 Fed. 572; The Georgetown, 135 Fed. 854; The Westhall, 153 Fed. 1010; The Maine, 2 F. (2) 605; cf. *Intagliata v. Ship Owners and Merchants Towboat Company*, 1946 A. M. C. 263; and (d) continuing to go full speed ahead in the jaws of collision and not going full astern; citing The New York, 175 U. S. 187, 20 S. Ct. 67. The New Orleans flotilla, proceeding upstream at the slow speed of 3.8 M. P. H. as against 17.23 for the Quemado Lake, was held at fault for crossing the center line of the river onto the bend side, the stream being about 1800 feet wide at that point, citing The Stephen R. Jones, 27 F. (2) 208; The Norne, 59 F. (2) 145; The Pennsylvania, 19 Wall. 125, 86 U. S. 125, 22 L. Ed. 148.

We accept the trial court's findings of fact, and the majority concurs in its conclusion that the negligence of neither vessel was wholly sufficient to account for the accident, from which it follows that the damages should be divided; but the writer of this opinion thinks that the major fault of the descending vessel heavily and flagrantly outweighs the error of the towboat, and that justice re-

LEANS, that he was running this bend about the middle of the River, which was the normal manner for an ascending towboat and tow to navigate at that point.[3] In the absence of any testimony to the contrary, Captain Clay's unequivocal statement that he was observing the custom which prevailed at that point should be accepted by Your Honors. Accordingly, if the Towboat NEW ORLEANS with her tow was rounding this point in the manner customarily employed by towboats, there was no violation of a custom, and therefore no negligence in that regard can be ascribed to the Towboat NEW ORLEANS, and she should be exonerated.

SECOND GROUND FOR REHEARING

Assuming, but certainly not conceding, that the Towboat NEW ORLEANS was guilty of fault in crossing the center line of the River to the bend side, such fault *per se* is no reason for condemning her in this action As Your Honors have said in *Societa Anonima Navigazione Alta Italia v. Oil Transport Company, Inc.* (1956) 232 F. 2d 422, 1956 A.M.C. 1073, wherein you exonerated a vessel guilty of technical fault:

> " * * * for the fault to change the result and inflict legal consequences, it must have been a contributing cause, e. g., *Cleary Bros. v. The Dauntless*, 2 Cir., 178 F. 2d 72, 1950 AMC 44; *National Bulk Carriers v. U. S.* (The Nashbulk; The Rutgers Victory), 2 Cir., 183 F. 2d 405, 1950 AMC 1293; *Crowley Launch & T. Co. v. Wilming-*

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[3] R. 33-34. Captain Clay testified as to the normal movement of an upbound tow drawing ten feet as follows:

"Q. And you drawing ten feet?

A. I would go around that point about the middle of the river.

Q. Is that the normal manner in which an ascending tug and tow navigate the point?

A. Yes, sir."

FIRST GROUND FOR REHEARING

In discussing this first ground for a rehearing, that the Court erred in finding the Towboat NEW ORLEANS guilty of fault which caused or contributed to this collision, we do so with the full realization that the affirmative finding of the District Court that the Towboat NEW ORLEANS was guilty of fault is to be accepted by Your Honors unless it is "clearly erroneous". In our opinion it is "clearly erroneous".

The District Judge, out of the welter of charges of negligence levied against the Towboat NEW ORLEANS, found her guilty of negligence in only one particular, and since Your Honors in your opinion do not make any additional findings of negligence, we assume that that particular finding is the sole ground for holding the Towboat NEW ORLEANS at fault.

This sole finding of negligence is that the Towboat NEW ORLEANS had crossed the center line of the River, which at that point was 1,800 feet wide, on to the bend side. This, said the District Judge in his Conclusion of Law No. IV,[1] was a violation of a custom[2] on the Mississippi River of such long standing as to have the force of law, that upbound vessels proceed up under the point and downbound vessels proceed down in the bend.[2]

We submit that there is no proof in the record that the NEW ORLEANS violated any custom which existed for navigating this bend. On the contrary, the sole testimony relative to the custom was the testimony of Captain Roy Clay, the Master of the Towboat NEW OR-

[1] Supplemental Record, Page 9.

[2] Citing *The Stephen R. Jones* (5 C.C.A.) 27 F. 2d 208, and *The Norne* (5 C.C.A.) 59 F. 2d 145.

United States Court of Appeals

FIFTH CIRCUIT

No. 16,202

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellant,

versus

ESSO SHIPPING COMPANY, Claimant of the S/S QUEMADO LAKE,
Appellee.

ESSO SHIPPING COMPANY, Claimant of the S/S QUEMADO LAKE,
Appellant,

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellee.

BRIEF ON BEHALF OF MISSISSIPPI VALLEY BARGE LINE COMPANY IN SUPPORT OF ITS PETITION FOR A REHEARING.

FOREWORD

May It Please the Court:

This petition for a rehearing and the brief in support thereof are filed in the sincere belief that error has been committed by Your Honors in the disposition of the appeal and the cross-appeal in these cases, for the reasons and on the grounds set forth in the petition, which we discuss here seriatim.

CERTIFICATE

I certify that the above and foregoing petition for rehearing is presented in good faith and not for the purpose of delay.

/s/ SELIM B. LEMLE
Attorney for Mississippi Valley Barge Line Company, Petitioner.

IV.

The Court erred in failing to hold that the Tanker QUEMADO LAKE had the last clear chance to avoid the collision. By reason of such failure, its holding in this case is contrary to the holding in its decision rendered January 18, 1957, in the case of *Thurston Crawford, d/b/a River Transit Company, and Howard Bus Line, Inc., Claimant of Tug "Suwannee", v. Indian Towing Company, Inc., as owner of the M/V "Cherokee"*, No. 16,156 of the docket of this Court (not yet officially reported).

Petitioner avers that it is filing in connection with this petition a brief in support thereof; that for the reasons above set forth and amplified in the brief a rehearing should be granted herein; that the opinion and decree of this Honorable Court rendered on February 13, 1957, should be set aside; and that a decree be entered herein modifying the decree granted herein by the United States District Court for the Eastern District of Louisiana holding the Towboat NEW ORLEANS and the Tanker QUEMADO LAKE mutually at fault for the collision which gave rise to these proceedings and dividing the damages between them, and decreeing the Tanker QUEMADO LAKE solely at fault and the Towboat NEW ORLEANS without fault for such collision.

Respectfully submitted,

LEMLE & KELLEHER,
Proctors for the M/V NEW ORLEANS and Mississippi Valley Barge Line Company, Appellants and Cross-Appellees.

SELIM B. LEMLE, **/s/ SELIM B. LEMLE**
Advocate.

due consideration this Honorable Court will modify the decree granted herein by the United States District Court for the Eastern District of Louisiana holding the Towboat NEW ORLEANS and the Tanker QUEMADO LAKE mutually at fault for the collision which gave rise to these proceedings and dividing the damages between them, and will decree the Tanker QUEMADO LAKE solely at fault and the Towboat NEW ORLEANS without fault for such collision.

The grounds for this petition are as follows:

I.

The Court erred in finding that the Tanker NEW ORLEANS was guilty of any fault which caused or contributed to this collision.

II.

The Court erred in condemning the Towboat NEW ORLEANS because she was allegedly guilty of "fault" in crossing the center line of the River, even though there remained at least 500 feet of navigable water between the port side of the Towboat NEW ORLEANS' flotilla and the west bank, in which the Tanker QUEMADO LAKE might have safely navigated past the Towboat NEW ORLEANS' flotilla.

III.

The Court erred in holding that if the Towboat NEW ORLEANS was guilty of any fault which caused or contributed to this collision, such fault was more than minor fault, and in failing to excuse the conduct of the Towboat NEW ORLEANS under the "Major-Minor Fault" Rule.

PETITION FOR REHEARING AND BRIEF IN SUPPORT FILED:
February 27, 1957.

United States Court of Appeals

FIFTH CIRCUIT

No. 16,202

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellant,

versus

ESSO SHIPPING COMPANY, Claimant of the S/S QUEMADO LAKE,
Appellee.

ESSO SHIPPING COMPANY, Claimant of the S/S QUEMADO LAKE,
Appellant,

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellee.

PETITION BY MISSISSIPPI VALLEY BARGE LINE COMPANY FOR A REHEARING.

To the Honorable United States Court of Appeals for the Fifth Circuit and the Honorables, the Judges Thereof:

Mississippi Valley Barge Line Company, Appellant and Cross-Appellee in the above-entitled and numbered causes, prays that this Honorable Court will rehear and reconsider the matters decided by it herein on February 13, 1957, will cause an order or orders to be made revoking and recalling the decree made in these causes on said day and grant a rehearing herein, and that after

JUDGMENT.

Extract from the Minutes of February 13, 1957.

MISSISSIPPI VALLEY BARGE LINE COMPANY,

No. 16202. versus

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE.

This cause came on to heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court that the judgment of the said District Court appealed from in this cause be, and the same is hereby, affirmed;

It is further ordered, adjudged and decreed that the appellant and appellee, Mississippi Valley Barge Line Company, and the surety on its appeal bond herein, St. Paul Mercury Indemnity Company, be condemned, in solido, to pay one-half of the costs of this cause in this Court, and that the appellee and appellant, Esso Shipping Company, Claimant of the SS. Quemado Lake, and the surety on its appeal bond herein, American Surety Company of New York, be condemned, in solido, to pay one-half of the costs of this cause in this Court, for all of which execution may be issued out of the said District Court.

quires the condemnation completely of the more culpable vessel. *Compania De Maderas, etc., v. The Queenston Heights*, 220 F. (2) 120, 1955 A. M. C. 797.

Accordingly, the judgment appealed from is affirmed.

AFFIRMED.

ton Transportation Co., 9 Cir., 117 F. 2d 651, 1941 AMC 449; *The Fort St. George* (The Olympic), 2 Cir., 27 F. 2d 788, 1927 AMC 1606; *The Maine*, D.C. Or., 2 F. 2d 605, 1924 AMC 820; *The Westhall*, D.C. E.D. Va., 153 F. 1010."

We submit that the position of the Towboat NEW ORLEANS' flotilla in the River was not a contributing factor to the collision because there was ample room (500-600 feet) between the NEW ORLEANS' flotilla and the bank in which the Tanker QUEMADO LAKE could have navigated safely past the Towboat NEW ORLEANS' flotilla—and would have so navigated safely had the QUEMADO LAKE not driven at high speed into the bend so close to the bank that she "smelled" the bank and sheered out and struck the Towboat NEW ORLEANS.[4] Obviously, the position of the NEW ORLEANS' flotilla in the River was only a condition, and not a contributing cause of the collision, and accordingly the Towboat NEW ORLEANS should be exonerated of any fault and the Tanker QUEMADO LAKE held solely at fault.

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[4] The District Judge made the affirmative finding of fact (Supplemental Record, Page 8) that the Tanker QUEMADO LAKE crossed the head of the NEW ORLEANS' flotilla "100 yards upriver from it, approached practically into the mud on the right descending bank, which caused her to sheer to the left and toward the center of the River. Furthermore, the vessel was steered to hard left at this time in order to leave the bank. About 30 seconds thereafter, the port side of the QUEMADO LAKE struck the port side of the NEW ORLEANS' stern while the vessels were in the bend side of the River." See also the following finding of fact (XI) that the QUEMADO LAKE was "run full ahead at all times, except, when the vessel was in the right descending bank, the engines were stopped but almost immediately put full ahead again because the QUEMADO LAKE would not then answer to her helm". See also Conclusion of Law III(b) (Supplemental Record, Page 9) condemning the QUEMADO LAKE for:

> "negligently navigating too close to the right descending bank, which caused the QUEMADO LAKE to smell the bank and to take a sheer to its left or alternatively, oversteering to the left, by reason of which the QUEMADO LAKE did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the River and struck the NEW ORLEANS;"

THIRD GROUND FOR REHEARING

Assuming, however, that Your Honors have reached the conclusion that the Towboat NEW ORLEANS was guilty of fault in crossing the center line of the River which condemns her of fault even though there was still 500-600 feet of water in which the downbound Tanker QUEMADO LAKE might have navigated between the Towboat NEW ORLEANS' flotilla and the right descending bank of the River, that was, at worst, only minor fault, and, as the author of the opinion in these cases correctly states in the opinion, "the major fault of the descending vessel [the Tanker QUEMADO LAKE] heavily and flagrantly outweighs the error of the towboat [NEW ORLEANS], and that justice requires the condemnation completely of the more culpable vessel. *Compania de Maderas, Etc. v. The Queenston Heights*, 220 F. (2) 120, 1955 A.M.C. 797."

We respectfully submit that the author of the opinion in these cases was correct in this appraisal of the evidence and of the proper disposition of this case under the prevailing jurisprudence in this Court, not only in *The Star of Honduras - Queenston Heights*, but also in the subsequent jurisprudence of this Court in *Koch-Ellis Marine Contractors, Inc. v. Chemical Barge Lines, Inc.*, (1955) 224 F. 2d 115, 1955 A.M.C. 1536, and *Societa Anonima Navigazione Alta Italia v. Oil Transport Company, Inc.* (1956) 232 F. 2d 422, 1956 A.M.C. 1073. We respectfully submit that the disposition of this matter by the majority of the panel of this Court contrary to the express findings and beliefs of the author of the opinion does violence not only to *The Star of Honduras - Queenston Heights*, but also to the cited subsequent jurisprudence.

FOURTH GROUND FOR REHEARING

We submit that in failing to hold that the Tanker QUEMADO LAKE had the last clear chance to avoid this collision and therefore was solely at fault therefor, Your Honors do violence to the well-established rule which Your Honors followed recently in the *Thurston Crawford-Indian Towing Company* Case that where one of two vessels has the last clear chance to avoid a collision she will be held solely at fault and condemned therefor because of her failure to navigate so as to avoid the collision. In that case the situation was quite similar to that which the District Judge found to exist in this case: There the Tug SUWANNEE with a tow was out of its place in the channel and was collided with by the Tug CHEROKEE, running light. Holding the Tug CHEROKEE solely at fault, this Court said:

> "The Cherokee clearly had the last clear chance to avoid the collision. *The Cornelius Vanderbilt* (2 Cir.), 120 F. 2d 766. *The Sanday*, (2 Cir.), 122 F. 2d 325.
>
> "Whether this be called an application of the doctrine of last clear chance or the rule of causation, makes little difference. Where, as here, an act is negligent, but is not the proximate cause of the injury, it is merely a condition. As such it is not a basis of liability. *P. Dougherty Co. v. United States* (3 Cir.), 207 F. 2d 626."

We submit that the application of that rule to this case requires that the Tanker QUEMADO LAKE be held solely at fault and the Towboat NEW ORLEANS absolved from liability for this collision.

Remember that the Towboat NEW ORLEANS was encumbered with a tow of seventeen barges and was

making a little over three miles per hour, as compared to the QUEMADO LAKE's 17-plus miles per hour. The NEW ORLEANS had nothing like the maneuverability or the agility of the QUEMADO LAKE, and in these circumstances was nothing more than a "sitting duck" and unable to get out of the way of the on-rushing QUEMADO LAKE. That the District Judge recognized in his opinion, for he condemned the QUEMADO LAKE for failing to navigate in such a manner as not to embarrass the NEW ORLEANS, which was encumbered with a large and heavy tow.[5]

Of course, the reverse of that proposition is true: The NEW ORLEANS did nothing to embarrass the navigation of the QUEMADO LAKE, and that vessel could nave passed safely and with ease between the NEW ORLEANS and the right descending bank except for her own excessive speed and improper steering. Had the QUEMADO LAKE slowed down on sighting of the NEW ORLEANS, as her own bridge bell book in the record discloses that she had theretofore done whenever she had passed a tow, rather than steered into the bend at full speed, she would not have "smelled" the bank and sheered out into collision.

We submit that indubitably the QUEMADO LAKE had the last clear chance to avoid this collision and, paraphrasing Your Honors', language in the *Thurston*

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[5] Supplemental Record, Page 9. One of the grounds on which the QUEMADO LAKE was found at fault was in:

> "(c) not navigating in a manner so as not to embarrass the Towboat NEW ORLEANS, which was encumbered with a large and heavy tow. *The Mayumba* (D.C.N.Y. 1884) 21 F. 476, *The Rose Culkin* (D.C.N.Y. 1892) 52 F. 328, *The Lucy* (C.C.A. 4, 1896) 74 F. 572, *The Georgetown* (Va. 1905) 135 F 854; *The Whitehall* (D.C. Va. 1899) 153 F. 1010, *The Maine* (D.C. Ore. 1924) 2 F. 2d 605, *Cf. Intgatiata vs. Ship Owners and Masters Towboat Company* (Cal. 1955) 1946 A.M.C. 263;"

Crawford - Indian Towing Company Case, whether this be called an application of the doctrine of last clear chance or the rule of causation makes little difference. If the NEW ORLEANS was in an improper place in the channel, which we deny, that was not the proximate cause of the collision but merely a condition, and as such is not a basis of liability, for the QUEMADO LAKE had the last clear chance to avoid the collision.

CONCLUSION

We, therefore, respectfully submit that Your Honors' opinion handed down on February 13, 1957, and the decree resulting therefrom are erroneous on the grounds stated in the petition for a rehearing; that Your Honors should grant a rehearing herein, and should determine either that the NEW ORLEANS was without fault for this collision and the resulting damage or that the fault, if any, was minor and to be excused under the "Major-Minor Fault" Rule, or that in any event the QUEMADO LAKE had the last clear chance to avoid this collision, so that the NEW ORLEANS should be exonerated and the QUEMADO LAKE held solely at fault for this collision and the resulting damage.

Respectfully submitted,

LEMLE & KELLEHER,
Proctors for the M/V NEW ORLEANS and Mississippi Valley Barge Line Company, Appellants and Cross-Appellees.

SELIM B. LEMLE,
Advocate.

/s/ SELIM B. LEMLE

CERTIFICATE

I certify that a copy of the within petition for a rehearing and the brief in support thereof has been served on opposing counsel of record herein by depositing a copy thereof in the United States Mail, postage prepaid, addressed to them at their office in the City of New Orleans.

New Orleans, Louisiana, February , 1957.

/s/ SELIM B. LEMLE

ORDER DENYING REHEARING

Extract from the Minutes of April 2, 1957.

MISSISSIPPI VALLEY BARGE LINE COMPANY,

No. 16202 versus

ESSO SHIPPING COMPANY, Claimant of the SS. QUEMADO LAKE,

(AND REVERSE TITLE)

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

* * * *

MOTION OF APPELLANT-APPELLEE FOR STAY OF MANDATE
FILED: April 18, 1957.

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 16,202

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellant,

versus

ESSO SHIPPING COMPANY, Claimant of the S S QUEMADO LAKE,
Appellee.

ESSO SHIPPING COMPANY, Claimant of the S S QUEMADO LAKE,
Appellant,

versus

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Appellee.

APPLICATION FOR STAY OF MANDATE

Suggesting to the Court that it is the bona fide intention of Mississippi Valley Barge Line Company to make application to the Supreme Court of the United States for a writ of certiorari in this case within the time allowed by law; that valid grounds for issuance of such a writ are present herein; and that Mississippi Valley Barge Line Company will require a stay of the mandate of this Court pending preparation and filing of such application;

Mississippi Valley Barge Line Company, through its undersigned proctor of record, moves the Court to enter an order withholding its mandate herein for a period of ninety (90) days, to enable Mississippi Valley Barge Line Company to apply for a writ of certiorari from the Supreme Court of the United States.

New Orleans, Louisiana, April 18, 1957.

(Signed) SELIM B. LEMLE
SELIM B. LEMLE
Proctor for Mississippi Valley Barge Line Company

ORDER STAYING MANDATE FILED:
April 23, 1957.

United States Court of Appeals
For The Fifth Circuit

MISSISSIPPI VALLEY BARGE LINE COMPANY
Appellant & Appellee,

versus No. 16202

ESSO SHIPPING COMPANY, Claimant of the S. S. QUEMADO LAKE,
Appellee & Appellant.

(AND REVERSE TITLE)

ON CONSIDERATION OF THE APPLICATION of the Appellant-Appellee in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable Appellant-Appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, IT IS ORDERED that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition and record have been filed. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order, of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

DONE AT NEW ORLEANS, LA., this 23rd day of April, 1957.

s/ EDWIN R. HOLMES
United States Circuit Judge.

CLERK'S CERTIFICATE

UNITED STATES OF AMERICA
UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT.

I, Edward W. Wadsworth, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 286 to 307, next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 16202, wherein Mississippi Valley Barge Line Company, is appellant and appellee and Esso Shipping Company, Claimant of the SS. Quemado Lake, is appellee and appellant, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the mimeographed record and supplemental record numbered from 1 to 285 are identical with the mimeographed record and supplemental record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit this 24th day of April, A. D., 1957.

(SEAL)

(Signed) EDWARD W. WADSWORTH
Clerk, United States Court of
Appeals for the Fifth Circuit.

JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~1097~~ 179

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Petitioner,

versus

ESSO SHIPPING COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

SELIM B. LEMLE,
1836 National Bank of
Commerce Building,
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Proctor for Petitioner.

LEMLE & KELLEHER,
GEORGE B. MATTHEWS,
Of Counsel.

HAUSER PRINTING CO., INC., NEW ORLEANS

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No.

MISSISSIPPI VALLEY BARGE LINE COMPANY,
Petitioner,

versus

ESSO SHIPPING COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Mississippi Valley Barge Line Company (hereinafter referred to simply as "Valley") prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit affirming an interlocutory decree in admiralty of the United States District Court for the Eastern District of Louisiana, decreeing mutual fault with regard to the liability of two colliding vessels.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 240 F. 2d 606, and is printed *infra*, Appendix A, p. 15. The findings of fact and conclusions of law of the District Court have not been officially reported, but will be

found in the Record, p. 277 ff., and are printed *infra*, Appendix B, p. 19.

JURISDICTION

The opinion of the Court of Appeals and judgment of affirmance were filed February 13, 1957. Thereafter petitioner presented to that Court a petition for rehearing, which was denied without further opinion in an order filed on April 2, 1957. Jurisdiction of this Court lies under 28 U.S.C. 1254 (1), Act of June 25, 1948, c. 646, 62 Stat. 928.

QUESTION PRESENTED

This case involves an important question of admiralty law: the application of the so-called "Pennsylvania Rule," derived from Your Honors' opinion in *The Pennsylvania* (1874), 86 U.S. 125, 22 L. Ed. 148, which is now receiving varied interpretations in the different Circuits where it has been invoked, so that in a collision case whether a vessel be exonerated or condemned depends upon the Circuit wherein the libel is filed. In this case the Pennsylvania Rule was applied under the following circumstances:

A collision occurred in the Mississippi River, where it is 1800 feet wide, between the upbound towboat NEW ORLEANS, encumbered with a tow of seventeen barges, and the downbound Tanker QUEMADO LAKE. There can be no dispute as to the facts since they were found by the District Judge and accepted by the Court of Appeals. *McAllister v. United States*, 348 U.S. 19, 75 S. Ct. 6. From these facts it appears that the NEW ORLEANS flotilla found itself in the middle of the river approaching a bend to its right. The QUEMADO LAKE entered the bend

from upstream on its own left-hand side at seventeen (17) miles per hour, crossed the river, always maintaining full speed ahead, steered into the bank on her own right-hand side, sheered out into the middle of the river, and, despite the fact that there was ample room to pass the NEW ORLEANS flotilla on either side, ran into that vessel. Although the NEW ORLEANS gave the QUEMADO LAKE ample room to pass, she was held at fault for crossing slightly the center line of the river. The NEW ORLEANS, however, was in effect a "sitting duck" and could have done nothing to avoid the collision. On the contrary, the QUEMADO LAKE was found guilty of numerous grievous faults and she alone had an opportunity to prevent the collision. Therefore, the question presented is:

Under the circumstances outlined above, does the Pennsylvania Rule dictate or require a finding of mutual fault or is that rule to be applied realistically and reasonably so as to absolve the Towboat NEW ORLEANS?

STATEMENT OF THE CASE

As pointed out above, under *McAllister* there can be no factual dispute in this case. The accepted facts indicate that on the night of June 20, 1952, the Tanker QUEMADO LAKE, downbound in the Mississippi River to sea and proceeding at the inordinately high rate of speed for a vessel in confined inland waters of 17.23 miles per hour over the bottom, ran into the Towboat NEW ORLEANS, upbound with a tow of seventeen barges, proceeding at a speed of 3.3 miles per hour over the bottom. The collision occurred in what was for the towboat flotilla a right-hand bend, where the river is 1800 feet wide. The towboat flotilla, 105 feet wide at

its widest point, was unaware of the approach of the downbound QUEMADO LAKE until the towboat reached a point just about or slightly to its left of the middle of the river, when its pilot first saw the QUEMADO LAKE downbound and favoring its own left hand bank of the river above the point, well on the starboard hand of the towboat flotilla.[1] Apparently at the same instant the pilot of the tanker saw the towboat flotilla, each theretofore having been hidden from the other by the point. On sighting, each vessel blew one blast for a port to port passage, to allow the tanker to come down in the bend on its right-hand side of the river pursuant to a custom on the Mississippi River that upbound vessels come up under the point and downbound vessels run the bend. Upon the exchange of signals, the course of the towboat flotilla was directed for a period of five seconds to its right, and then steadied up. The course of the tanker was directed to its right and it crossed the head of the towboat flotilla 100 yards upstream and then came left, intending to set a course paralleling the shape of the bend and pass down the port side of the towboat flotilla. The QUEMADO LAKE, however, ran too far into the bend and approached too close to its own right-hand bank, by reason of which it smelled the bank and sheered to its left, or it was over-steered to its left so it failed to make good its course down its right-hand bank and ran out into the River and struck the port after quarter of the NEW ORLEANS. From the Record and the findings of fact of the District Court it further appears that from the time that the vessels sighted each other to the time of the collision the towboat flotilla had run just about its own length, 1,000 feet, and the QUEMADO LAKE had run 5,000 feet or more; that from the

[1] See Appendix C, *infra* p. 26, for an aerial chart whereon have been plotted the positions and courses of the vessels after they sighted.

time that the vessels sighted each other the speed of the towboat flotilla was never altered and the QUEMADO LAKE maintained full speed ahead until it smelled the bank in the bend, when its engine was stopped momentarily, but was immediately put full speed ahead when it was found then that the QUEMADO LAKE, stuck in the mud, would not answer its helm, and continued to run full speed ahead until after the QUEMADO LAKE struck the NEW ORLEANS.

On that testimony the District Court entered an interlocutory decree of mutual fault. The Court of Appeals affirmed, accepting unanimously the Trial Court's findings of fact, and the majority accepting the Trial Court's conclusions of law, but with the author of the opinion dissenting from the conclusion that the Towboat NEW ORLEANS was guilty of fault, and asserting that it should be excused under the major-minor fault rule. Thus:

> "We accept the trial court's findings of fact, and the majority concurs in its conclusion that the negligence of neither vessel was wholly sufficient to account for the accident, from which it follows that the damages should be divided; but the writer of this opinion thinks that the major fault of the descending vessel heavily and flagrantly outweighs the error of the towboat, and that justice requires the condemnation completely of the more culpable vessel. *Compania De Maderas, etc., v. The Queenston Heights*, 5 Cir., 220 F. 2d 120."

The faults of the two vessels were stated by the Court of Appeals to be as follows:

> "The lower court held that the QUEMADO LAKE was at fault in (a) proceeding at too high

a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the NEW ORLEANS flotilla without reducing speed; (b) negligently navigating too close to the right descending bank, which caused the QUEMADO to smell the bank and to take a sheer to its left; or alternatively, oversteering to the left, by reason of which the QUEMADO LAKE did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the river and struck the NEW ORLEANS; (c) not navigating in a manner so as not to embarrass the towboat NEW ORLEANS, which was encumbered with a large and heavy tow, citing *The Mayumba*, D.C., 21 F. 476; *The Rose Culkin*, D.C., 52 F. 328; *The Lucy*, 4 Cir., 74 F. 572; *The Georgetown*, D.C., 135 F. 854; *The Westhall*, D.C., 153 F. 1010; The *Maine*, D.C., 2 F. 2d 605; *cf. Intagliata v. Shipowners & Merchants Towboat Co.*, 26 Cal. 2d 365, 159 P. 2d 1; and (d) continuing to go full speed ahead in the jaws of collision and not going full astern, citing *The New York*, 175 U.S. 187, 20 S. Ct. 67, 44 L. Ed. 126. The NEW ORLEANS flotilla, proceeding upstream at the slow speed of 3.8 M.P.H. as against 17.23 for the QUEMADO LAKE, was held at fault for crossing the center line of the river onto the bend side, the stream being about 1800 feet wide at that point, citing *The Stephen R. Jones*, 5 Cir., 27 F. 2d 298; *The Norne*, 5 Cir., 59 F. 2d 145; *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148."

REASONS FOR GRANTING THE WRIT

The definitive findings and conclusions of the District Court, accepted by the Court of Appeals, foreclose any claim or argument that this collision could have happened or did happen in any manner other than that determined in such findings and conclusions. *McAllister v. United States, supra.* As opposed to what the Court

of Appeals characterized as the "major fault" of the QUEMADO LAKE, the NEW ORLEANS was condemned for one-half of the damages because it had crossed the center line of an 1,800 feet wide river slightly onto the bend side, but without any finding that there was not ample room on the bend side for the QUEMADO LAKE to pass. No other fault was ascribed to the NEW ORLEANS.

Accepting, as we must, that the NEW ORLEANS was at fault for having crossed the center line of the river, it is most important to bear in mind that there was absolutely nothing that it could have done to have avoided a collision once the vessels were in sight—the die had been cast for her. On the other hand, all that the QUEMADO LAKE had to do was to reduce speed, steer properly into the bend and pass the NEW ORLEANS in the ample room available to it. Even after the QUEMADO LAKE failed in these duties, as it obviously did, a collision still would have been averted had not the QUEMADO LAKE, then partially aground in the mud with its engine stopped, put its engine full speed ahead, resulting in sheering or running out into the river and striking the NEW ORLEANS. The QUEMADO LAKE alone had the opportunity to avoid the collision, but she did not take it. Despite this, the majority of this panel of the Court of Appeals felt bound to a strict application of the Pennsylvania Rule.

This rule, if literally applied, is indeed a harsh one, and has frequently been criticized on that ground. The trend of some courts today is to liberalize the application of the rule and to read into it what, we submit, this Court must always have intended: "reasonableness". This important principle of admiralty law has not been

considered by this Court in recent years and the result is that different standards of justice are applied in different Circuits. Exoneration or condemnation of vessels in collision cases now depends upon the composition of the panel of the Circuit Court which hears a collision damage case.

The modern trend is well illustrated by the decision of the United States Court of Appeals for the First Circuit in *Seaboard Tug & Barge, Inc. v. Rederi AB/Disa* (1954) 213 F. 2d 772, where that Court interpreted the Pennsylvania Rule not as a hard and fast rule that requires a vessel guilty of statutory fault to show that it could not by any possibility have contributed to the collision, but on the contrary as a rule that requires that the "reasonable probabilities" that the fault could have contributed to a collision should be considered.

The Fifth Circuit also has recognized this trend. In *Compania De Maderas, etc. v. The Queenston Heights* (1955), 220 F. 2d 120, the United States Court of Appeals for the Fifth Circuit said unequivocally and unreservedly that it was "in accord with the statement of the First Circuit, in *Seaboard Tug & Barge v. Rederi AB/Disa*, 213 F. 2d 772, that the Supreme Court, in *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148, did not intend to establish a hard and fast rule that every vessel guilty of a statutory fault has the burden of establishing that its fault could not by any stretch of the imagination have had any causal relation to the collision, no matter how speculative, improbable, or remote", and again applied the rule of "reasonableness". See also *Koch-Ellis Marine Contractors v. Chemical Barge Lines* (1955) 224 F. 2d 115.

The most recent expression of the Fifth Circuit in

this field is *Wilson v. Oil Transport Company, Inc.* (1957) 242 F. 2d 727. There the Court held that a failure to have a lookout did not place the burden of showing that the dereliction not only did not but could not have contributed to the damage on the offending vessel under the Pennsylvania Rule, but that the issue of negligence should be determined by the test of reasonableness.

Accordingly, we now have presented the incongruous situation of the Fifth Circuit, in contravention of its own jurisprudence as well as that of the First and Second Circuits, instead of relaxing the harsh Pennsylvania Rule, enlarging it by applying it in a case where the sole fault of the vessel condemned was in being in a place in the river other than that decreed by custom, notwithstanding the fact that there was ample room on either side of it for the colliding vessel to pass safely and the further fact that she could not by her own maneuvers extricate herself from the impending collision.

We reiterate that there was nothing that the towboat flotilla could have done to have extricated itself from the impending collision once it and the QUEMADO LAKE had sighted each other. The towboat flotilla was just a "sitting duck". Large and slow, proceeding at a speed of 3.8 miles per hour, it could not move out of the way of the approaching QUEMADO LAKE, which was making a speed of 17.23 miles per hour, almost five times as fast as was the towboat flotilla. While the towboat flotilla was proceeding one length, or about 1,000 feet, the QUEMADO LAKE ran almost 5,000 feet, sheered or was oversteered out into the River and struck the NEW ORLEANS. Such action repeatedly, and seemingly without exception until the case at bar, has resulted in the Federal Courts' condemning the steam-

ship, holding it solely at fault, and exculpating the tug (or towboat) flotilla. Both the District Court and the Fifth Circuit cited this jurisprudence from the Federal appellate and district courts in support of their conclusion that the QUEMADO LAKE was at fault for not navigating in such a manner as not to embarrass the NEW ORLEANS which was encumbered with a heavy tow, but both departed from this jurisprudence by failing to exculpate the NEW ORLEANS.

The landmark case in this field is Your Honors' decision in *The Syracuse* (1870) 9 Wall. 672, 76 U.S. 672, 19 L. Ed. 783. In that case a steamship collided with the Tug SYRACUSE with a heavy ice barge in tow alongside. Your Honors, holding the steamship solely at fault and exonerating the tug and tow, said:

> "A tug with vessels in tow is in a very different condition from one unincumbered. She is not mistress of her motions. She cannot advance, recede or turn either way at discretion. She is bound to consult their safety as well as her own. She must see that what clears her of danger does not put them in peril. For many purposes they may be regarded as a part of herself. They have the benefit of her traction and she the burden of their inertia. The character of the fleet could not be mistaken. The attempt of the steamer, under such circumstances, to pass the other vessels, and in such close proximity to the Syracuse, at a speed of seventeen miles an hour, was gross and wanton recklessness. Before turning her head to the eastward she should have slowed her engine. If the prospect of danger darkened she should have stopped, and, if need be, have reversed it. She had no right thus to hurl herself like a projectile into the midst of the vessels before taking the hazard of the consequences and thus imperiling herself and them with all the lives and prop-

> erty on board. 'The Rule of the Road' gives no warrant for such conduct. The maxim applies, '*Sic utere two ut alienum non laedas.*' The steamer is condemnable alike upon reason and authority. *The New Jersey*, Olcott, 44; *The Rose*, 2 Wm. Rob. 3; Holt's Rule of the Road, 227, 247."

In *The Westhall*,[2] 153 F. 1010, the Court, citing and quoting extensively from *The Syracuse*, condemned a steamship and held it solely at fault for colliding with a tug encumbered with a heavy tow, which was admittedly on the wrong side of the channel, as it is alleged was the NEW ORLEANS. In *The Lucy*,[3] 74 F. 572, *The Georgetown*,[4] 135 F. 854, and *The Maine*,[5] 2 F. 2d 605, the Courts, in each instance citing *The Syracuse* and largely on the authority of that case, condemned steamships for colliding with tugs encumbered with heavy tows and exculpated the tugs.

In *The Mayumba* (five cases),[6] 21 F. 476, without reference to *The Syracuse* the Court condemned a steamship and held it solely at fault for a collision with a tow of some thirty boats attached by hawsers to two tugs, and about 1,800 feet long, holding that the tow could neither stop nor move much out of its course, and that it should have been avoided by the steamship.

In *The Rose-Culkin*,[7] 52 F. 328, the Court, without reference to *The Syracuse*, condemned a sailing vessel, usually the privileged vessel, and held it solely at fault for a collision with a tug encumbered by a tow making two knots speed, again for the reason that the tug and

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[2] D.C. E.D. Va., 1899.
[3] 4 C.C.A., 1896.
[4] D.C. E.D. Va., 1905.
[5] D.C. D.Or., 1924.
[6] D.C. S.D. N.Y., 1884.
[7] D.C. S.D. N.Y., 1892.

tow could not have maneuvered so as to get out of the way of the schooner, which was making some ten knots.

While the two cases last cited do not refer specifically to *The Syracuse*, it is noteworthy that the decision in each case was on the same basis as that on which Your Honors placed *The Syracuse*.

After the case at bar had been argued and while it was being held under submission by the Fifth Circuit, another panel of that Court in a similar case reached a diametrically opposite result less than a month before the Fifth Circuit's decision of the case at bar. In that case, *Crawford v. Indian Towing Company*,[8] 240 F. 2d 308,[9] an unencumbered tug collided with the tow of an encumbered tug in a head-to-head passing situation. The Fifth Circuit, without reference to either *The Syracuse* or the Pennsylvania Rule, held the unencumbered tug solely at fault and exculpated the encumbered tow, on the last clear chance doctrine, citing *The Cornelius Vanderbilt*,[10] 120 F. 2d 766, *The Sanday*,[11] 122 F. 2d 325, and *P. Dougherty Co. v. United States*,[12] 207 F. 2d 626. On application for rehearing in the case at bar, the attention of the Court was called to this contrary decision [13] of another panel, and it was urged to grant a rehearing because of the contrary results reached by two panels of the same Court, but the rehearing was refused without opinion or remark.[14]

Further, as pointed out by the author of the opinion

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[8] Decided January 18, 1957. The case at bar was decided February 13, 1957.

[9] Certiorari denied, May 13, 1957.

[10] 2 C.C.A., 1941.

[11] 2 C.C.A., 1941.

[12] C.A. 3, 1953.

[13] pp. 3, 10 and 11 of appellant's petition for rehearing and brief in support thereof, R. 292 ff.

[14] R., p. 305.

in the Fifth Circuit, who disagreed with the conclusion of the other two members of the panel in holding the NEW ORLEANS liable, obviously, in comparison with the grievous fault of the QUEMADO LAKE, any possible fault of the NEW ORLEANS was so slight as to warrant exculpating the NEW ORLEANS and holding the QUEMADO LAKE solely at fault under the major-minor fault rule, on the authority of the jurisprudence of the Fifth Circuit in *Compania De Maderas, etc. v. The Queenston Heights* (1955), 220 F. 2d 120.

Accordingly, we have here a situation where indisputably the action of the Court of Appeals in failing to exculpate the NEW ORLEANS is contrary to Your Honors' decision in *The Syracuse*, contrary to the jurisprudence of the Federal appellate and district courts which have followed *The Syracuse*, contrary to the Fifth Circuit's own jurisprudence in *Crawford - Indian Towing Company* and of the Second and Third Circuits, whose decisions form the basis on which *Crawford - Indian Towing Company* was decided, and contrary to the Fifth Circuit's own jurisprudence in *Compania De Maderas, etc. v. The Queenston Heights*, relative to the application of the major-minor fault rule.

As stated, the decision of the Fifth Circuit in the case at bar, failing to exculpate the NEW ORLEANS, seemingly marks the sole and only departure from an unbroken line of jurisprudence in the Federal courts which extended from 1870, when Your Honors decided *The Syracuse*, down to the present time.

Accordingly, we submit that ample reason appears for granting a writ of certiorari and for the amendment of the decree of the Fifth Circuit so as to exculpate the NEW ORLEANS.

CONCLUSION

For the reasons set forth above it is respectfully submitted that this petition for a writ of certiorari should be granted and that the decree of the Court of Appeals should be amended, exonerating the Towboat NEW ORLEANS, and, as so amended, the decree should be affirmed.

Respectfully submitted,

SELIM B. LEMLE,
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Commerce Building,
New Orleans 12, Louisiana,
Proctor for Petitioner.

LEMLE & KELLEHER,
GEORGE B. MATTHEWS,
Of Counsel.

APPENDIX A

OPINION OF THE COURT OF APPEALS

(February 13, 1957)

Before HUTCHESON, Chief Judge, and HOLMES and BORAH, Circuit Judges.

HOLMES, Circuit Judge: This is a suit in admiralty, growing out of a collision on the Mississippi River between ascending and descending vessels, a tanker and a flotilla of barges propelled by a tug. The collision occurred in a bend of the river, and the trial judge found that the descending vessel, in spite of the danger, came on down the river without slackening its speed and, at or before the moment of collision, put its engines into full speed ahead, when it should have put them into reverse. From a holding that both vessels were at fault and that the damages should be divided, both sides have appealed, and the controversy here is waged upon the contention of each side that the other was solely to blame. Into the equation the doctrine of major and minor fault is also introduced.

The accident occurred on the night of June 20th, 1956, and the ascending vessel was the tug New Orleans, which was shoving ahead a tow of 17 barges in five tiers. The overall length of this tow was 872 feet, and its width was 105 feet at the widest point. The combined length of the tow and towboat was 1087 feet. The descending vessel was the Quemado Lake, which was loaded and drawing 30 feet forward and 31 feet 10 inches aft, or a mean draft of 30 feet 11 inches. The hour was about

9:15 P. M. The night was dark, but visibility was otherwise unimpaired by weather factors. Both vessels were properly showing all lights. The Quemado Lake was travelling downstream and averaging 17.23 miles per hour over the bottom. Navigation of the waters wherein this collision occurred is governed by the "Pilot Rules for the Western Rivers and the Red River of the North."

The lower court held that the Quemado Lake was at fault in (a) proceeding at too high a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the New Orleans flotilla without reducing speed; (b) negligently navigating too close to the right descending bank, which caused the Quemado to smell the bank and to take a sheer to its left or alternatively, oversteering to the left, by reason of which the Quemado Lake did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the river and struck the New Orleans; (c) not navigating in a manner so as not to embarrass the towboat New Orleans, which was encumbered with a large and heavy tow, citing *The Mayumba*, 21 Fed. 476; *The Rose Culkin*, 52 Fed. 328; *The Lucy*, 74 Fed. 572; *The Georgetown*, 135 Fed. 854; *The Westhall*, 153 Fed. 1010; *The Maine*, 2 F. (2) 605; cf. *Intgatiata v. Ship Owners and Master Towboat Company*, 1946 A.M.C. 263; and (d) continuing to go full speed ahead in the jaws of collision and not going full astern, citing *The New York*, 175 U.S. 187, 20 S. Ct. 67. The New Orleans flotilla, proceeding upstream at the slow speed of 3.8 M.P.H. as against 17.23 for the Quemado Lake, was held at fault for crossing the center line of the river onto the bend side, the stream being about 1800 feet wide at that point, citing *The Stephen R. Jones*, 27 F. (2) 208; *The Norne*, 59 F. (2) 145; *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148.

We accept the trial court's findings of fact, and the majority concurs in its conclusion that the negligence of neither vessel was wholly sufficient to account for the accident, from which it follows that the damages should be divided; but the writer of this opinion thinks that the major fault of the descending vessel heavily and flagrantly outweighs the error of the towboat, and that justice requires the condemnation completely of the more culpable vessel. *Compania De Maderas, etc. v. The Queenston Heights*, 220 F. (2) 120, 1955 A.M.C. 797.

Accordingly, the judgment appealed from is affirmed.

AFFIRMED.

APPENDIX B

FINDINGS OF FACT AND CONCLUSIONS OF LAW OF THE UNITED STATES DISTRICT COURT

CHRISTENBERRY, J.

The libel in this action arose out of a collision between the towboat NEW ORLEANS and the SS QUEMADO LAKE, which the libel alleges was caused solely by the fault of the latter vessel. Respondent answered and cross-libelled, admitting the collision, but alleging that it was caused by the sole fault of the towboat NEW ORLEANS.

The case came on for trial on the issue of liability only, and the Court, having considered the pleadings, the evidence adduced, the arguments of counsel, and the law applicable, makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

I.

At all times material hereto, Mississippi Valley Barge Line Company was and now is a corporation organized under the laws of the State of Delaware.

II.

At all times material hereto, Esso Shipping Company was and now is a corporation organized under the laws of the State of Delaware.

III.

At all times material hereto, Mississippi Valley Barge Line Company was the owner and operator of the Towboat NEW ORLEANS, a twin screw vessel propelled by two diesel engines of approximately 3600 indicated horsepower, and the engines are pilot house controlled. The vessel is 213 feet in length over-all, 43 feet wide, and its full depth approximately 10 feet. She has two steering rudders located aft of her propellers, used for steering when going ahead, and two backing rudders located forward of her propellers, used for steering when going astern.

IV.

At all times material hereto, Esso Shipping Company was the operator of the QUEMADO LAKE, an American tank steamship, single crew, 526 feet long.

V.

On the night of June 20, 1956, the NEW ORLEANS was shoving ahead a tow of 17 barges in five tiers. The overall length of this tow was 872 feet, and its width was 105 feet at the widest point. The combined length of the towboat and tow was 1087 feet. Captain Roy Clay, an old experienced river pilot, was in charge of her navigation.

VI.

On the same date, the QUEMADO LAKE was loaded and drawing 30 feet forward and 31 feet 10 inches aft, or a mean draft of 30 feet 11 inches. Captain Carlton F. Trosclair, licensed as a Master First Class Pilot on the Mississippi River in the area of the collision, was in charge of the QUEMADO LAKE.

VII.

On the night of June 20, 1956, at about 9:15 P.M. (time shown by the NEW ORLEANS' clock), the NEW ORLEANS was in collision with the QUEMADO LAKE at approximately mile 172.5 a.h.p. (above the head of the passes). The night was dark but visibility was otherwise unimpaired by weather factors. Both vessels were properly showing all lights. The River was about 1800 feet wide at the point of collision.

VIII.

The NEW ORLEANS was proceeding upstream from Crescent Light at Mile 146.8 a.h.p., at an average rate of speed of 3.8 m.p.h. over the bottom. When the NEW ORLEANS and her tow reached Riverton Light at Mile 171.2 a.h.p., on the left descending bank of the River, it was favoring that bank. Captain Clay then laid a course toward the right descending bank of the River, which placed Riverton Light 50 yards on his port stern and Rateau Light, on the right descending bank at Mile 173.0 a.h.p., 50 yards on his port bow, and which if continued to the right descending bank of the River would have brought the head of the NEW ORLEANS flotilla to that bank 50 yards upstream from Rateau Light. He intended to turn to his starboard, after passing the center of the River, and steering upstream past Brangier Point, on the left descending bank of the River. While on this course and approximately midway between Riverton Light and Rateau Light, Captain Clay, for the first time, became aware of the presence of the QUEMADO LAKE, when that vessel, downbound and on the left descending bank of the River above Brangier Point, emerged from behind the Point so as to be visible to a vessel below the Point. At this time the NEW ORLEANS

and her tow were about 500 feet from the right descending bank.

IX.

Earlier, the QUEMADO LAKE had departed Baton Rouge, travelligg downstream, and passed Plaquemine Light at Mile 208.3 a.h.p.; From that light until she reached White Castle Light at Mile 198.4, the vessel was averaging 15.4 m.p.h. over the bottom, and her wheel was turning at 80 to 82 revolutions per minute at full speed ahead. At 7:17 P.M., on orders from the bridge, the wheel was increased to 90 r.p.m., and from White Castle Light to the point of collision she was averaging 17.23 m.p.h. over the bottom. As the vessel passed the Donaldsonville Ferry crossing, a few miles above Brangier Point, her speed was reduced, but it was increased to full speed ahead again as it approached Brangier Point. From Brangier Point on the left descending bank of the River, a course was laid to Rateau Light on the right descending bank of the River in order to follow the channel for deep draft vessels, which course then proceeded downstream on the bend side of the River. As the beam of the vessel was in the center of the River, approaching Rateau Light, the Pilot first noticed the green light on the head of the tow of the NEW ORLEANS. A few seconds later the Pilot noticed the green light on the towboat.

X.

The NEW ORLEANS blew one long whistle, as did the QUEMADO LAKE almost simultaneously, indicating a port to port passing. The distance between the QUEMADO LAKE and the head of the tow at that time was less than one mile. Immediately the NEW ORLEANS

was swung to starboard for about 15 seconds in an attempt to allow ample passing room on her port for the QUEMADO LAKE, and was put back on center or perhaps 5 degrees to port so as to steady up the NEW ORLEANS flotilla. When the NEW ORLEANS turned its tow to starboard the stern of the towboat necessarily "crabbed" to the left in the direction of the right descending bank and the course of the QUEMADO LAKE from Rateau Light. Meanwhile, the QUEMADO LAKE, moving toward Rateau Light, crossed the head of the NEW ORLEANS and her tow 100 yards upriver from it, approached practically into the mud on the right descending bank, which caused her to sheer to the left and toward the center of the River. Furthermore, the vessel was steered to hard left at this time in order to leave the bank. About 30 seconds thereafter, the port side of the QUEMADO LAKE struck the port side of the NEW ORLEANS' stern while the vessels were in the bend side of the River.

XI.

The speed of the NEW ORLEANS was never diminished during the above events. The QUEMADO LAKE was run full ahead at all times, except, when the vessel was in the right descending bank, the engines were stopped but almost immediately put full ahead again because the QUEMADO LAKE would not then answer to her helm.

CONCLUSIONS OF LAW

I.

The subject matter of this litigation, a marine collision, is within the admiralty and maritime jurisdiction of the Court. 28 U.S.C., 1333.

II.

Navigation of the waters wherein this collision occurred is governed by the "Pilot Rules for the Western Rivers and the Red River of the North".

III

The QUEMADO LAKE was at fault in:

(a) proceeding at too high a rate of speed for a deep draft vessel in restricted waters and endeavoring to pass the NEW ORLEANS flotilla without reducing speed;

(b) negligently navigating too close to the right descending bank, which caused the QUEMADO LAKE to smell the bank and to take a sheer to its left or, alternatively, oversteering to the left, by reason of which the QUEMADO LAKE did not make good a course down-river parallel with the right descending bank, but ran out toward the center of the River and struck the NEW ORLEANS;

(c) not navigating in a manner so as not to embarrass the Towboat NEW ORLEANS, which was encumbered with a large and heavy tow. *The Mayumba* (D.C. N.Y. 1884) 21 F. 476, *The Rose Culkin* (D.C. N.Y. 1892) 52 F. 328, *The Lucy* (C.C.A. 4, 1896) 74 F. 572, *The Georgetown* (Va. 1905) 135 F. 854; *The Whitehall* (D.C. Va. 1899) 153 F. 1010, *The Maine* (D.C. Ore. 1924) 2 F. 2d 605; *Cf. Intgatiata vs. Ship Owners and Masters Towboat Company* (Cal. 1955) 1946 A.M.C. 263;

(d) continuing to go full speed ahead in the jaws of collision and not going full astern. *The New York* (1888) 175 U.S. 187, 20 S. Ct. 67.

IV.

There is a custom on the Mississippi River of such long standing as to have the force of law that up-bound

vessels proceed up under the point and down-bound vessels proceed down in the bend. *The Stephen R. Jones* (5 C.C.A.) 27 F. 2d 208; *The Norne* (5 C.C.A.) 59 F. 2d 145. The NEW ORLEANS flotilla violated this rule by crossing the center line of the River onto the bend side, and therefore carries the burden of showing that this violation not only did not but could not have caused the collision. *The Pennsylvania*, 19 Wall. 125, 86 U.S. 125, 22 L. Ed. 148. This burden the NEW ORLEANS has not successfully discharged.

V.

For the reasons above given, I find that this collision occurred through the mutual fault of the tanker QUEMADO LAKE and the steamer NEW ORLEANS, and that the damage resulting therefrom should be divided between them. Interest shall run from the date of the final decree fixing damages.

New Orleans, Louisiana, November 9th, 1956.

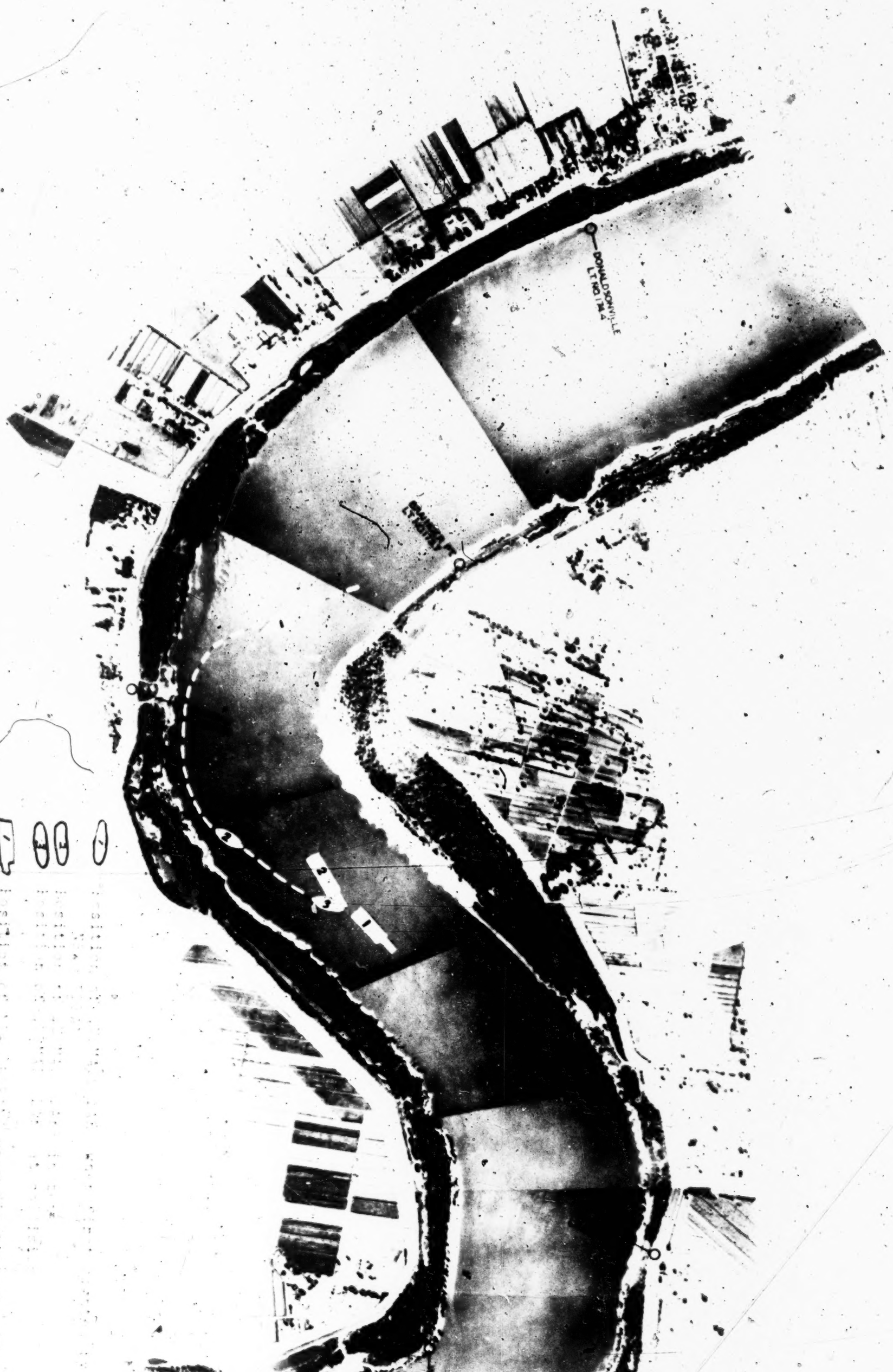
(Sgd.) HERBERT W. CHRISTENBERRY

UNITED STATES DISTRICT JUDGE.

APPENDIX C

CHART
(Photoprint)

For the convenience of the Court and Counsel, the aerial chart of that stretch of the River where this collision occurred, on which have been plotted the positions of the QUEMADO LAKE and the NEW ORLEANS when they first sighted each other and the subsequent course and progress of the QUEMADO LAKE and the towboat flotilla down to the time of the collision, constructed from data taken from the exhibit Clay 2, sent to this Court in the original, is attached inside the back cover.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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 139

MISSISSIPPI VALLEY BARGE LINE COMPANY,

Petitioner,

versus

ESSO SHIPPING COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR RESPONDENT IN OPPOSITION.

RAYMOND T. GREENE,
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120 Broadway,
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STEPHEN J. BUCKLEY,
ALFRED M. FARRELL, JR.,
Of Counsel.

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BRIEF FOR RESPONDENT IN OPPOSITION.

Esso Shipping Company respectfully submits that the true questions presented herein do not warrant a review by this Court. The case at bar is one arising out of a collision between two vessels which case was litigated and the liability decided on the particular facts of the case which decision was subsequently affirmed by the Court of Appeals.

QUESTION PRESENTED.

The District Court found as a fact that the collision occurred when the up-bound Tug *New Orlean* with flotilla improperly and negligently crossed the center line of the Mississippi River into the wrong side of the channel while

negotiating a bend. The Court of Appeals accepted this finding of fact. Counsel for petitioner apparently agrees with this result when he states at page two of his petition: "There can be no dispute as to the facts since they were found by the District Judge and accepted by the Court of Appeals."

The District Court found that when the *New Orleans* flotilla crossed onto the bend side of the river it was in violation of a custom of the Mississippi River of such long standing as to have the force of law. This custom provides that up-bound vessels proceed upstream under the point and that down-bound vessels proceed down in the bend. Accordingly this particular passing required each vessel to stay on its own right hand side of the channel. The Court of Appeals agreed that the *New Orleans* flotilla was at fault for its failure to proceed in accord with this custom. Counsel for petitioner again agrees when he states: "Accepting, as we must, that the *New Orleans* was at fault for having crossed the center line of the river, . . ." On these facts the Court of Appeals concluded "that the negligence of neither vessel was wholly sufficient to account for the accident, from which it follows that the damages should be divided." (Appendix to petition, P. 17)

Consequently, the question presented is simply whether the conceded fault of the *New Orleans* flotilla in failing to navigate the point side of the Mississippi River was a contributory cause of the collision with the SS *Quemado Lake*.

Reasons for Denying the Writ.

1. The issue in the present case is uniquely narrow since all cases involving causal connection between the fault and the collision must be judged on their own particular facts. Consequently, the decision of the Court of

Appeals can have no effect on anyone apart from the litigants.

2. The decision of the Court of Appeals is clearly correct and presents no conflict of decision. Counsel for the petitioner concedes the fault of the *New Orleans* flotilla and the application of the so-called "Pennsylvania Rule" derived from this Court's opinion in *The Pennsylvania*, 86 U. S. 125. He contends, however, that the Court of Appeals felt bound to a strict application of the Pennsylvania Rule and failed to follow the so-called "modern trend" of some courts to liberalize its application. In support of the "modern trend" of cases, counsel for petitioner cites *Seaboard Tug & Barge* v. *Rederi AB/Disa*, 1 Cir., 213 F. 2d 772, where the Court said:

> "We cannot believe that the Supreme Court in The Pennsylvania intended to establish as a hard and fast rule that every vessel guilty of a statutory fault has the burden of establishing that its fault could not by any stretch of the imagination have had any causal relation to the collision no matter how speculative, improbable or remote."

This statement with respect to the Pennsylvania Rule was followed by the Fifth Circuit in the cited cases of *Compania De Maderas, etc.* v. *The Queenston Heights*, 220 F. 2d 120 and *Koch-Ellis Marine Contractors* v. *Chemical Barge Lines*, 224 F. 2d 115.

The Court of Appeals in the present case held that *the negligence of neither vessel was wholly sufficient to account for the accident.** This conclusion can admit of no other interpretation than that the collision was caused by the contributory faults of the SS. *Quemado Lake* and the *New*

* Italics ours.

Orleans flotilla. The Court of Appeals does not suggest that the damages must be divided because the *New Orleans* flotilla did not overcome the burden of establishing that its failure to navigate the point side of the river could not by any stretch of the imagination have had any causal relation to the collision no matter how speculative, improbable or remote. Judge Holmes, who wrote the opinion of the Court of Appeals, disagreed with the majority not because the latter improperly stated the Pennsylvania Rule but on the grounds that he did not agree that the fault of the *New Orleans* was a contributory cause of the collision.

Counsel for petitioner concludes his argument by attempting to assert a conflict between the present case and a line of cases holding a steamship solely liable for a collision with an encumbered tug. To sustain such a conflict it must be shown that the cited cases stand for the proposition that the rules of the road and customs having the force of law do not apply to encumbered tugs. The cited cases state no such proposition despite petitioner's zealous efforts to create such an allusion. Petitioner has done nothing more than bring to the attention of this Court cases establishing sole fault on the part of a steamship where the facts peculiar to those cases showed no contributory fault on the part of the encumbered tug.

3. Petitioner has already received an appellate review of his case and offers no worthwhile reason for the granting of this petition. He has not shown any conflict of opinion nor has he even attempted to show that the issue is of any importance to warrant review by this Court. In *Magnum Co.* v. *Coty*, 262 U. S. 159, 163, this Court said:

> "The jurisdiction to bring up cases by certiorari from the Circuit Courts of Appeals was given for two purposes, first to secure uniformity of decision

between those Courts in the nine circuits, and second, to bring up cases involving questions of importance which it is in the public interest to have decided by this Court of last resort. *The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing.*"*

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

RAYMOND T. GREENE,
Counsel for Respondent.

STEPHEN J. BUCKLEY,
ALFRED M. FARRELL, JR.,
of Counsel.

July 11, 1957.